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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

NO. 72-1574

BOB LAWRENCE REALTY, INC.,

and BOBBY L. LAWRENCE,

Petitioners,

VS.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

NO._____

BOB LAWRENCE REALTY, INC., and BOBBY L. LAWRENCE

Petitioners

VS

UNITED STATES OF AMERICA,

Respondent

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-entitled case on February 13, 1973.

CITATIONS TO THE OPINIONS BELOW

The opinion of Judge Newell Edenfield enjoining petitioners from violating §3604 (e) of the Civil Rights Act of 1968, 42 U.S.C. §3601 et seq, appears in Appendix B, infra, and is reported in 335 F. Supp 1004. The opinion of the Circuit Court of Appeals is unreported and appears in Appendix B, infra.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on February 13, 1973, a Motion for Rehearing filed by the petitioners on March 7, 1973, was denied March 16, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1).

STATUTES INVOLVED

The Federal Statutes involved are 42 U. S. C. §3601 et seq. [Public Laws 90-284 Title VIII §801, April 11, 1968, 82 Stat. 81].

QUESTIONS PRESENTED

The questions presented on this Petition for Certiorari are:

(1) Whether Congress has the authority to enact legislation, specifically §3604 (e) of the Fair Housing Act of 1968, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601 et seq, under the Thirteenth Amendment to the Constitution of the United States?

(2) Whether the Congress, by enacting legislation, specifically §3604 (e) of the Fair Housing Act of 1968, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601 et seq has the right to place a prior restraint on the right of free speech guaranteed under the First Amendment to the Constitution of the United States?

(3) Whether the Appellant has been denied due process of law, guaranteed by the Fifth Amendment, by the District Court finding that Appellant did not himself violate the law in any individual pattern or practice in any way but that he was guilty of a group pattern or practice although he had no connection whatever with any member of the group?

(4) Whether the Attorney General's action in enforcing the provisions of §3604 (e) of the Fair Housing Act of 1968, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601 et seq, which proscribes the otherwise legitimate doing of business by the petitioners is an unconstitutional application of the Act.

STATEMENT

This suit was brought by the Attorney General of the United States against Petitioners and others alleging as the Court of Appeals stated:

> (1) that the defendants participated, individually and collectively, in a pattern or practice of resistance to the enjoyment of rights granted by the Act, and (2) that a group of persons had been denied rights secured by the Act, raising an issue of general public importance.
>
> U.S.A. v. Bob Lawrence Realty, Inc., et al
>
> App. B at p. 2

The Court of Appeals described this as an action against the petitioner for "blockbusting" activities prohibited by 42 U.S.C. §3604 (e).

The facts of this case are unique to the petitioner because he was born and raised in this area of Atlanta, Georgia, and maintained his only office there. He was a

small localized real estate agent emeshed in circumstances when the area began to change from all white to transitional his choice at that time was to either move his business to another part of the city or to remain and do business in a transitional area.

The Government's suit alleged that petitioners and others engaged individually and collectively in a pattern or practice violative of the Act. The District Court found, specifically, that petitioner was active in the area before it became transitional and did not move into the area after the transition had begun. Most important, the Court found that there were no facts by which it could find that petitioner had engaged, individually, in any pattern or practice.

However, as to petitioner and other defendants, the District Court went further and found that the petitioner was a part of a group which engaged in a pattern or practice violative of the Act. In its Order of January 28, 1971, the Court denied petitioner's motion for a complete summary judgment granting only a partial summary judgment on the issue of whether or not the petitioner had

individually violated the Act. The Court found and held that the acts of the petitioner and its agents were not in violation of the Act. The District Court found that, because sales were made in the area, because some representations were made in the area, and because some salesmen knew the area was considered transitional, these facts alone possibly gave rise to an inference that the various defendants made a coordinated effort to induce the persons in the transitional area to sell their homes in panic. Upon the trial of this case the District Court found that although the representations of petitioner's agents (2 sales personnel) did not constitute an individual pattern or practice of violating the Act (by petitioner), they were made as part of a group pattern or practice of violating the Act by all agents in the area.

On appeal, the Court of Appeals affirmed. The Court dealt with the social (and constitutional) value of 42 U.S.C. §3604 (e), the anti-blockbusting provision of the Fair Housing Act of 1968, in the following manner:

(1) Congress has the authority to enact §3604 (e), to aid in the elimination of the "badges and incidents of slavery in the United States".

U.S.A. v. Bob Lawrence Realty, Inc. App. B at p. 10

(2) §3604 (e) is not a prior restraint on the right of free speech because it proscribes commercial activity and, only incidentally, proscribes commercial "speech". "Any informational value in a statement violative of §3604 (e) is clearly outweighted by the government's overriding interest in preventing blockbusting."

U.S.A. v. Bob Lawrence Realty, Inc., ibid. p. 14

(3) The Attorney General has standing to sue in the action for injunctive relief because he had a reasonable cause to believe that the defendants engaged in a pattern or practice of

resistance to §3604 (e).

U.S.A. v. Bob Lawrence Realty, Inc., et al ibid.

REASONS FOR GRANTING THE WRIT

(I)

The decision of the Court of Appeals should be reviewed because it erroneously interprets the authority and scope of §3604 (e) (Section 804 (e) Civil Rights Act of 1968).

The question at issue is the length of the reach of the Thirteenth Amendment to the Constitution of the United States. The single case authority for an application of the Thirteenth Amentment is Jones v. Mayer Co., 1968, 392 U.S. 409, 88 S. Ct. 2186, 20 L. Ed 2d 1189, holding that Congress is empowered to enforce the article by prohibiting individuals from engaging in activities which constitute a "badge" of slavery.

This Court has upheld Congressional authority to use "appropriate legislation" to restrict the acts of individuals. But what acts may Congress restrict? May it impose a prior restraint on speech? Petitioner submits that speech cannot be a "badge" of slavery and cannot be restricted by the Thirteenth Amendment.

The Jones v. Mayer case is thus being given an expansive interpretation which really is a license to Congress to legislate in the Civil Rights field in any manner it sees fit even to the point of infringing on other Constitutionally protected rights.

The petitioner thus asks the Court to review and reevaluate the holding of the single case authority in this area and to restrict its application.

(II)

The Court is asked in this petition to state what, if any, limits the First Amendment places on prior restraints of speech if the speech is made on a commercial basis. There does not seem to be any definitive statement from this Court on this point, but several of the appeals court decisions indicate that "commercial" speech is not protected by the First Amendment.

(III)

Another question presented by this petition is whether or not a defendant's constitutional right of due

process under the Fifth Amendment is violated when he is held to participate in and be liable for a "group pattern or practice" when individually he commits no wrongful act and does not join with any of the other persons who do violate the act.

Collaterally, the Court is asked to define what is meant by a "group pattern or practice" and to just what extent liability can attach to members of an industry doing business completely independently of each other, and who have no control over each other, and who do not join in any sort of joint undertaking.

This is the question so important to the real estate industry because most of its members are faced with the prospect of being a part of a "group pattern or practice" by operating independently of each other. They are truly in a dilemma because if they act in concert they may well be in violation of the anti-trust laws, and, if they act independently, they may be liable for the acts of the others.

(IV)

The other issue of crucial importance to the real estate industry is whether or not the government can proscribe the legitimate operation,under color of this statute, of the real estate business.

It has never been denied that the main thrust of the Government's complaint is that these companies operated in a racially transitional area, and that the mere presence of a real estate agent in such an area was, in effect, a "racial representation" because everyone knew what their purpose was without the necessity of making any racial representations. The District Court made a specific finding that the atmosphere was so charged in these areas that it would be superfluous for any agent to make any such racial representation.

The purpose of the Act is manifestly to insure housing opportunities being made available to minority groups which had previously been denied access to these neighborhoods. However, in the enforcement of this Act,

the Executive Branch has gone further and has determined that additionally, a further requirement is to be read into the enforcement of the Act, and that the areas being made available to blacks must also be "stabilized" to prevent them from changing from all white to all black.

The target is the real estate industry because of the feeling that if only the real estate agents will leave these people alone a racially mixed neighborhood will be much more likely to result. The Government thus ascribes a cause and effect situation to these agents vis a vis racial balance which simply does not exist in fact, but it also has gone far beyond the statutory authorization.

Thus, the Act is not being used to open up areas of housing formerly denied to blacks, but it is being used as an attack upon the real estate industry in a forthright attempt to keep them from doing business in these areas after a certain number of blacks have moved in.

Thus the constitutional application of this Act is challenged by this appeal.

CONCLUSION

This petition brings to this Court constitutional issues which are important not only to this petitioner but which affect the entire real estate industry. Each member of the industry is exposed to liability without any standards of conduct to guide them, and with the very real possibility that they can be held responsible for the acts of others over which they have no control. This is exactly what happened to the petitioner in this case.

Also included in this petition is the issue of whether or not the Thirteenth Amendment allows Congress to infringe on the protections of the other Amendments and to what extent the limitations previously imposed on congressional legislative authority have been expanded.

These issues have not been previously determined and they are of gravity and importance nationwide. They are not localized or restricted in application, and petitioner respectfully requests that this application be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA	)	
	)	
VS	)	CIVIL ACTION NO. 13467
	)	
RAYMOND C. MITCHELL, d/b/a RAY MITCHELL REALTY	)	
	)	
	)	
UNITED STATES OF AMERICA	)	
	)	
VS	)	CIVIL ACTION NO. 13468
	)	
BOB LAWRENCE REALTY, INC. BOBBY L. LAWRENCE, president and MRS. RUTH STANLEY d/b/a STANLEY REALTY COMPANY	)	
	)	

O R D E R

In these "blockbusting" suits in each of which motions for complete summary judgment have previously been denied, [1] the Attorney General originally sought injunctive relief again six Atlanta real estate firms for allegedly engaging, for profit, in a pattern or practice of inducing or attempting to induce persons to sell or rent their homes by representations regarding the entry of prospective entry into the neighborhood of persons of a particular race, color, religion or national origin, in violation of the Fair Housing Act of 1968, sections 3604 and 3613 of Title 42 of the United States Code. As part of such actions the government also claimed that the defendant had deprived a group of persons of their rights as guaranteed by that Act. Three of the cases were disposed of by consent before trial and the three remaining cases were tried before the court without a jury on October 4 through 14, 1971.

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[1] United States v. Mitchell, 327 F.Supp. 476 and United State

v. Bob Lawrence, 327 F.Supp. 487.

All of the defendants are real estate brokers licensed by the State of Georgia to engage in the listing and selling of real estate. Each is the sole proprietor of the company bearing his (or her) name.

Defendant Mitchell employs approximately 80 sales persons or agents, about one-half of whom are part-time, the others being regular full-time employees. Defendant Stanley employs 14 agents and Lawrence 27. Each defendant, through its sales people, acts as agent for listing sellers and presents offers (contracts) on behalf of potential buyers, earning commissions from the sellers only when sales are consummated. Almost all such sales involve single-family dwellings. All of the defendants and all agents are white.

The earnings of real estate salesmen are derived from the commissions earned on houses they sell and from no other source. A salesman's earnings increase in direct proportion to the increase in the number of houses he or she sells.

The Mitchell case involves four areas in Southwest Atlanta known as Heritage Valley, Dixie Pines, Kings Forest, and an area between Campbellton and Beecher Roads. These areas comprise altogether a total of four square miles. The cases against Stanley and Lawrence involve an area in Southeast Atlanta known as the Candler Road-Glenwood-McAfee area.

These areas have been since 1968 considered racially transitional; that is, prior to 1968 the racial occupancy of them was all white, but beginning in 1968 as blacks began moving in whites began moving out. All of the areas are now substantially all black. All of the defendants were aware of this transition.

Virtually all of the testimony in each case came either from housewives now or formerly living in the affected areas or from the defendants and agents themselves.

The evidence at the trial disclosed many illuminating things about what happens in a residential neighborhood when it becomes racially transitional. For example, if these cases are typical--and the court believes they are--the following consequences can be predicted as inevitable and beyond dispute: First, a sense of panic and urgency immediately grips the neighborhood and rumors circulate and recirculate about the extent of the intrusion (real or fancies), the effect on property values and the quality of education. Second, there are sales and rumors of sales, some true, some false. Third, the frenzied listing and sale of houses attracts real estate agents like flies to a leaking jug of honey. Fourth, even those owners who do not sell are morely tempted as their neightbors move away, and hence those who remain are peculiarly vulnerable. Fifth, the names of successful agents are exchanged and recommended between homeowners and frequently the agents are called by the owners themselves, if not to make a listing then at least to get an up-to-date appraisal. Constant solicitation of listings goes on by all agents either by house-to-house calls and/or by mail and/or by telephone, to the point where owners and residents are driven almost to distraction.

In this maelstrom the atmosphere is necessarily charged with Race, whether mentioned or not, and as a result there is very little cause or necessity for an agent to make direct representations as to race or as to what is going on. On the contrary both sides already know, all too well, what is going on. In short, for an agent to get a listing or make a sale <u>because</u> of racial tensions in such an area is relatively easy, whereas the direct <u>mention</u> of race in making the sale is superfluous and wholly unnecessary.

It is perhaps for this reason that the evidence here as to direct racial representations by the individual agent is skimpy indeed and is, in the view of the court, insufficient to establish an individual "pattern or practice" against the defendants or either of them.

At the same time what the evidence does establish, by overwhelming preponderance, is a "group" pattern or practice by all agents in the area, both defendants and non-defendants, and that some agent or agents of each of the defendants did knowingly participate in such pattern or practice, at least in some measure or to some degree.[2]

The court is further of the opinion that the foregoing finding establishes the necessary "concert" of action to allow the Attorney General to bring this suit and entitled him to an injunction requiring that, in the future, the defendants obey the law.

This would normally dispose of these cases, but in fairness to the defendants and in amelioration of the injunction to be entered the court cannot omit an observation that in at least some instances the agents were more sinned against than sinning. There is clear evidence, for example, that in at least one instance a complaining witness who had listed her house with an agent of one defendant, and who had recommended to other neighbors that they do likewise, became disenchanted with the agent

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2

For example: As to defendant Ray Michell, prohibited representations were made to Mrs. McCrimmon by agents Wofford and Rick (though both of these agents were either fired by this defendant or resigned long before these suits were filed); to Mrs. Turner and Mr. King by agent Cook; and to Mrs. Galloway by agent McDougall.

As to defendant Stanley, prohibited representations were made to Mrs. Hadley by agent Garner and to homeowner Rodgers by agent Rogers.

As to defendant Lawrence, prohibited representations were made to Mrs. Wilmer, Mrs. McCrum, Mrs. Brown, and Mrs. Crews by agents Hammond and Murrison.

primarily because a black purchaser whom the agent had produced reneged on his purchase contract. She freely admitted from the stand that because of this when the present investigation started she came forward as a witness as to statutory violations solely to "get" the real estate license of one of the defendants if she could do so.

At least two other governmental witnesses testified to their affiliation with a civic group first known as the "Neighborhood Stabilization Committee" and later as "South DeKalb Neighbors". Its object was to stabilize the neighborhood. Meetings were held weekly. One of these witnesses took an examination and became an agent herself simply to find out what could be done under the law. She was thoroughly familiar with the Fair Housing Act and its sanctions. She was party to a number of actions aimed at one of the defendant companies and others operating in the area. For example, on one occasion she put a sign in her yard saying, "Warning - Real Estate Agents shot on sight." On another occasion, as president of her local group, one of these witnesses attended a convention of a national neighborhood group in Dayton, Ohio, and brought home circulars advising homeowners to "encourage agents to make racial representations" in violation of the Act and to "lead the agents on" until a violation of the Act was established. Some 4,000 of these circulars were distributed in her neighborhood.

It also appears that of the defendants' agents making racial representations at least two had been discharged by defendants, for one cause or another, long before these suits were filed.

There was also evidence, undisputed in the record, that two of the three defendants remaining in the cases held meetings with their agents on a daily or weekly basis at which the appropriate sections of the Fair Housing Act were read and discussed and the agents admonished to observe its provisions.

Considering these circumstances and the scantiness of the direct evidence the court must say that it is not overly impressed with the gravity of the individual

transgressions of the individual defendants and their agents. It is convinced, however, that by a group pattern or practice the neighborhoods involved were, because of the racial transition thereof, harassed almost beyond endurance and that each of the defendants in some measure participated therein. They should therefore be enjoined.

It is therefore CONSIDERED, ORDERED AND ADJUDGED:

(1) That the defendants and their agents, employees, successors, and all those acting in concert or participation with them, be and they are hereby permanently enjoined from inducing or attempting to induce any person to sell or rent any dwelling by any explicit or implicit representations regarding the entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin;

(2) a. That the defendants shall instruct each salesman, agent, and employee of the provisions of the Fair Housing Act and of this decree, his obligations and duties thereunder, and that failure to comply with these obligations and duties may result in dismissal or other appropriate action. This instruction shall be given within ten (10) days of the entry of this decree, and thereafter within ten (10) days of hiring of any new salesmen, employees, and agents. The defendants shall secure from each salesman, employee, and agent a signed statement certifying that he understands his obligations and duties not to discriminate against any person on account of race, color, religion, or national origin in relation to the sale or rental of dwellings or the employment of personnel;

b. That the defendants shall conduct all solicitation effort in such a manner so that the types and amount of solicitation activity shall be essentially similar in all areas in which the defendants conduct business and the defendants shall not conduct a greater amount or a different type of soliciation in areas which are inhabited by Negroes, or partially inhabited by Negroes, than in areas which are not so inhabited;

c. That the defendants shall make a notation on their records to indicate the race of each person who purchases a house, or sells a house, in the course of their business;

d. That the defendants in all of their real estate transactions, shall provide their services without distinctions based on race or color;

3. That in case of a dispute as to any future charge by plaintiff that this order has been violated by either defendant, the parties, in an attempt to resolve such dispute, shall attempt to conciliate the matter which is the subject of the allegation within 30 days after the other party has been notified of the alleged violation, and a party shall not apply to this court for additional relief or other appropriate relief within such 30 day period, provided that nothing shall prevent a party from applying to the court in the event that the alleged violation is an explicit violation of the order, as found by the court, and the utilization of the procedure described above would result in irreparable injury to the victim of the alleged discrimination; and

4. That this order shall be effective for a period of two years from this date, provided, however, that for good cause shown, the parties may move this court for an extension or modification of the order, as appropriate, upon giving the other party 30 days notice prior to moving for such modification or extension.

Representatives of the plaintiff shall be permitted to inspect and copy all pertinent records of the defendants at any and all reasonable times, provided, however, that the plaintiff shall endeavor to minimize any inconvenience to the defendants from the inspection of such records.

In view of the foregoing injunction no ruling is made on the government's further contention that a group of persons has been denied rights under the Act, first because the evidence here, in the view of the court, is not sufficient to raise an issue of general public importance as required by 42 U.S.C.A. §3604(b), and second, because the individuals affected are each assured of a remedy under 42 U.S.C.A. §3612 in any event.

The court retains jurisdiction of this action for all purposes.

IT IS SO ORDERED.

This 27th day of December, 1971.

/s/ Newell Edenfield
NEWELL EDENFIELD
UNITED STATES DISTRICT JUDGE

ENTERED DECEMBER 27, 1971

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA	)	
	)	
V.	)	
	)	CIVIL ACTION
BOB LAWRENCE REALTY, INC.,	)	
BOBBY L. LAWRENCE, president;	)	
D. L. STOKES AND COMPANY, INC.,	)	NO. 13468
PETER M. LYNCH, president; MRS.	)	
FRANCES HEIMERICH, d/b/a EARL	)	
JACKSON REALTY COMPANY: REEVES AND	)	
REEVES, INC., FRED J. REEVES,	)	
president; and MRS. RUTH STANLEY,	)	
d/b/a STANLEY REALTY COMPANY	)	

ORDER

In this blockbusting case brought pursuant to 42 U.S.C.A. §3613, the government bases its complaint on three claims. The first two are based on the so-called "first alternative" of 42 U.S.C.A. §3613 which allows the Attorney General to bring an action when he "has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any rights granted" by the Fair Housing Amendment to the Civil Rights Act of 1968. First, the government argues that the acts of the several defendants, considered cumulatively, constitute action by a group of persons engaged in a pattern or practice of resistance to rights granted by 42 U.S.C.A. §3604(e). Second, the government alleges that the acts of the various defendant realty companies, considered individually, constitute a prohibited "pattern or practice" on the part of each of the defendants. The third claim of the complaint is based on the so-called "second alternative" of 42 U.S.C.A. §3613 which allows the Attorney General to bring an action in any case in which he has reasonable cause to believe "that any group of persons has been denied any of the rights granted by this sub-chapter and such denial raises an issue of general public importance. . . ." Under this alternative

the Attorney General alleges that defendants have denied to groups of homeowners, rights granted by 42 U.S.C.A.§3604(e)[1] and that this denial raises an issue of general public importance. Defendants D. L. Stokes and Bob Lawrence have moved for summary judgment, and the case is presently before the court for consideration of these motions.

Before considering the motions individually some standards should be set out. In United States v. Ray Mitchell Realty Co., Civil Action No. 13467, Jan. 27, 1971, this court indicated its approach in identifying a prohibited "representation" within the meaning of §3604(e) and a "pattern or practice" within the meaning of §3613. In considering whether an act constituted a §3604(e) representation this court said it would look to all the surrounding circumstances and apply a sort of "reasonable man" standard. The test would be whether a reasonable man, under all the circumstances, would regard the acts and words of the defendant as constituting an inducement to sell his home because members of a minority group were moving into the neighborhood. Of course the inducement would have to be made for profit. In defining "pattern or practice" this court said that the Attorney General must show that the defendants had a definite inclination to make prohibited representations in those areas where the representation would be effective. The court indicated that in order to establish this definite inclination, the Attorney General must show that the prohibited representations were more than a mere isolated occurrence; rather, he must show recurring acts of unlawful representation. The approaches developed in Ray Mitchell regarding the §3604(e) representation and the §3613 pattern or practice will be applied in this case.

The court will first consider defendants' motions in the context of the government's claim that each defendant's individual actions constitute a pattern or practice or

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[1]Section 3604(e) of Title 42 U.S.C.A. provides: "For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin."

prohibited §3604(e) representations. The government's case against Defendant Bob Lawrence is based on three allegedly prohibited representations made by Mrs. Doris Hammond and Mr. Wayne Murrison to residents of Juanita Street in Southeast Atlanta. (Plaintiff's Answer to Lawrence's Interrogatory No. 2.) The affidavits and depositions filed create issues of fact concerning whether the acts and words of agents Hammond and Murrison were §3604(e) representations. In many cases, these factual issues would preclude summary judgment. However, in the case of Defendant Lawrence, the crucial question is whether the government's allegations, even if true, show a definite inclination on the part of Defendant Lawrence to make prohibited representations in those cases in which the representations would be effective. It is to this pattern or practice determination that the court directs its attention.

Historically, the main area of concentration of Bob Lawrence Realty has been an area of Atlanta that is now transitional. Bob Lawrence Realty did not move into the area after the transition from white to black had begun. Rather, Defendant Lawrence's company was active in the area before it ever became "transitional." (Affidavits of Lawrence, Hammond, Murrison.) Indeed, Lawrence's office is located in the transitional area. (Affidavit of Lawrence.) The three representations relied on by the government were made by Agents Hammond and Murrison to three residents of Juanita Street. (Plaintiff's Answer to Lawrence's Interrogatory No. 2.) The representations were made by the agents working together on the same afternoon. (Affidavits of Hammond and Murrison.) None of the three persons contacted were ever contacted again by agents of Bob Lawrence Realty. (Depositions of Brown, Wilmer, and McCrum.) Only one sign of Bob Lawrence Realty had ever been seen in the area. (Deposition of Brown, p.8.) On the basis of these facts, this court cannot conclude that the government has alleged facts which show a definite inclination on the part of Bob Lawrence Realty to make prohibited representations. Though most of Lawrence's real estate activity has always been in areas that are now transitional, the government has alleged only three blockbusting representations. These violations were committed by two agents, working together. The representations were made on the same afternoon; there is no indication they were repeated by Agents Hammons or Murrison, or any other agents of Bob Lawrence.

When compared with Bob Lawrence Realty's total activity in the area, the three representations relied on by the government appear to be isolated incidents. The court concludes that no §3613 pattern or practice has been established on the part of Defendant Bob Lawrence, acting individually. Thus Defendant Lawrence's motion for summary judgment is granted as to this claim.

Defendant D. L. Stokes and Company has also moved for summary judgment contending that the acts alleged on the part of its agents do not establish an individual "pattern or practice" of making prohibited representations on the part of D. L. Stokes. The allegations of the government relate primarily to the activities of two of Stokes' agents: Mr. T. C. Roberts and Mrs. Betty L. Smith. Defendant Stokes has admitted, for the purposes of its motion, the activities of Agent T. C. Roberts. The government alleges that Mr. Roberts made §3604(e) representations on at least six different occasions. These representations were allegedly made from January or early February, 1969, through June, 1969. (Plaintiff's Answer to Stokes' Interrogatory No. 1.) The government has also alleged that Mrs. Betty L. Smith, another of Stokes' agents, made unlawful representations in January or February of 1970 by mailing unsolicited letters to homeowners in the transitional areas and by making at least one unlawful representation in person to a resident of the area. Stokes' answers to interrogatories incidcate that during December, 1969, and January and February, 1970, Agent Betty L. Smith mailed 213 unsolicited letters to persons living in the area defined by the government as transitional. The letter on its face makes no unlawful representations.[2] However, in

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[2]The letter reads as follows:

"We have many prospective Purchasers ready, willing and able, who would like to consider locating in your fine neighborhood. Have you considered selling? If so, we are confident that among the large number of prospects on our waiting lists, many would be interested in your particular home.

D. L. Stokes & Co., enjoys an enviable reputation and is one of the area's oldest and largest Realtors, with three offices in Metropolitan Atlanta to better serve you.

(Cont'd.)

Ray Mitchell, supra, this court indicated that whether acts or words are §3604 (e) representations will be determined by asking how a reasonable man would interpret the acts and words considering the circumstances under which the acts were done and the words were said. Though the letter mailed by Mrs. Smith contains no unlawful representations, the letter does indicate to the reader that Stokes has focused on the recipient's neighborhood, and indeed on the recipient's "particular home." Such a letter may or may not constitute an unlawful representation, considering all the surrounding circumstances.[3] Of course on a motion for summary judgment, all inferences must be against the movant.[4] When the §3604(e) representations of T. C. Roberts are linked with those of Betty L. Smith concerning which factual issues remain, the alleged period of misconduct is about a year. The alleged unlawful representations did not occur on one afternoon as they did in the case of Bob Lawrence. On the basis of the allegations admitted by Defendant Stokes, and those concerning which factual issues remain, this court cannot conclude as a

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2 (Cont'd.) "Our dynamic sales department is staffed with experienced and very capable salesmen and we are confider that we can render you an invaluable service in all your Real Estate requirements, with satisfactory results and performance assued.

"Wont [sic] you avail yourself of our services and call the writer at 458-3275 or if more convenient at 443-5348 in the evening, and we shall gladly give you a free appraisal - of course, there will be no cost or obligation on your part.

"Anticipating the pleasure of hearing from you, we remai

Yours very truly,
Betty L. Smith."

3 The government has supplied the affidavit of one recipient who testified that he regarded the unsolicited letter as a representation that "additional Negro families are enter ing the neighborhood." (Affidavit of Bostwick.)

4 "On summary judgment the inferences to be drawn from the underlying facts contained in such materials must be viewed in the light most favorable to the party opposing the motion." United States v. Diebold, Inc., 369 U.S. 654,655 (1

matter of law that Stokes has shown that it did not have a definite inclination to make §3604(e) representations in those circumstances in which the representations would be effective. Thus Defendant Stokes' motion for summary judgment concerning the government's claim of an individual unlawful pattern or practice on the part of Stokes is denied.

The government's second claim is that all of the defendants have done acts which cumulatively amount to a pattern or practice of resistance to rights granted by 42 U.S.C.A. §3604(e). The government contends in its original brief that "'[A]ll of the defendants, while operating in Southeast Atlanta and DeKalb County have engaged in one general pattern or practice of resistance to the full enjoyment of rights secured by 42 U.S.C.A. §3604(e). Nor does this mean that the several defendants consciously conspired to engage in any particular activity. The substance of the complaint is that individual defendants, during the same period of time made unlawful representations to residents of the same general area for the same purpose--profit--and predictably, with the same results. . . . [O]ur burden under 42 U.S.C.A. §3613 can be met by a demonstration at the trial that the cumulative efforts of all the defendants' unlawful activities contributed generally to the alleged resistance to federal law." Defendant D. L. Stokes argues that the government cannot prove its pattern or practice case under 42 U.S.C.A. §3613 by simply cumulating the activities of several defendants.

In determining whether the acts of various individual defendants may be cumulated to constitute a group pattern or practice, the court must first attempt a "plain meaning" interpretation of the statute. A literal reading of §3613 reveals no requirement that the government allege and prove a conspiracy in order to bring an action against several defendants. What the statute does require is that the Attorney General allege and prove a prohibited pattern or practice of activity on the part of a person, in the case of an action against a single defendant, or a prohibited pattern or practice on the part of a group, if the action is brought against a group collectively. In an action brought against a group, the "plain meaning" interpretation of the statute

indicates that it is the action of the group as a unit that must constitute a pattern or practice.[5]

This plain meaning interpretation must now be tested against the purpose of the statute as revealed in the legislative history and in the interests the statute was intended to affect. The legislative history of the section is not enlightening.[6] Consequently, neither party has relied on this history as really supporting an interpretation of the statute regarding the issue under consideration. The interests protected by the statute are identifiable. The first four subsections of §3604 protect the purchaser from various types of discrimination in the selling of homes. Section 3604(e) protects the homeowner from racial and certain other representations made for profit by third parties to induce a homeowner to sell in panic. To protect these homeowner's rights, Congress has prohibited representations that lead to infringement of the rights. The Act provides three methods of enforcement. A private party may file a complaint with

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[5] This interpretation seems evident upon analysis of the clause involved. "Person" and "group" are correlatives. The phrase "of persons" following "group" is a prepositional phrase identifying the content of the group. The statute provides an either/or situation. If either a person or a group is involved in a pattern or practice, the Attorney General may initiate an action.

[6] The original bill passed by the House did not contain a fair housing provision. The House Bill was considered by the Senate in the days following the assassination of Dr. Martin Luther King and in the midst of the "poor people's march" on Washington. The Senate added the fair housing amendment to the House Bill and sent the amended bill back to the House. In the House, the amended bill was passed via a "unanimous consent" resolution which sent the bill to the President without debate in the House and without a conference regarding the Senate amendment. Nowhere in the legislative proceedings were the issues under consideration here discussed by the legislato But see discussion of somewhat similar provisions of the 1960 and 1964 Civil Rights Acts in United States v. Mitchell (N.D. Ga., Jan. 27, 1970) pp. 10-14 (slip opinion).

the Secretary of Housing and Urban Development and initiate conciliation procedures which may eventually develop into a court action; a private party may initiate a civil suit directly in the United States district courts or in state courts; the Attorney General may initiate a civil suit in United States district courts. A private party may initiate a civil action if any of his rights granted by §§3603, 3604, 3605 or 3606 are violated, including a single §3604(e) representation. 42 U.S.C.A. §3612(a). The court may appoint an attorney for the private litigant whose rights have been infringed "in such circumstances as the court may deem just"; and the court may also allow the private litigant to proceed without payment of fees, costs or security. 42 U.S.C.A. §3612(b). The court may grant equitable relief as well as damages to the private party, and it may allow a prevailing plaintiff to receive court costs and attorney's fees where the private party is not financially able to assume the legal fees. 42 U.S.C.A. §3612(c). The Attorney General is more limited in the circumstances in which he may initiate an action. He must have:

(1) reasonable cause to believe that

(2) (a) a person or group of persons is engaged in a pattern or practice of resistance to rights granted by the Act

or

(b) a group of persons has been denied rights granted by the Act and such denial raises an issue of general public importance. (42 U.S.C.A. §3613.)

Under the pattern or practice provision, the Attorney General cannot bring an action for one isolated violation as can a private party. Under the "denial to a group of persons" provision the Attorney General cannot bring an action where only one person has been harmed, as can the private person to whom the prohibited representation was made.

It is important to remember that the above limitations on the Attorney General do not involve the rights of the homeowners damaged by §3604(e) representations; rather, the

limitations relate to the enforcement procedures chosen by Congress. The disagreement between the Attorney General and defendants basically involves a difference in point of view. The Attorney General seems to approach "pattern or practice" from the point of view of the homeowner. The moving defendants approach "pattern or practice" from the point of view of the realty company. To support the Attorney General's approach, it could be argued quite persuasively that it makes little difference in end result whether one realty company makes a §3604(e) representation to ten different homeowners on a street or ten different realty companies acting independently each make on §3604 representation to a different homeowner on the street. The potential end result is the same: panic selling on the part of homeowners, instability in the neighborhood, and ultimate resegregation. Thus, the Attorney General should be allowed to act for the homeowners in either situation. The answer to this argument is that it focuses on the rights rather than the procedure for enforcement of the rights.

Congress has provided two ways for private homeowners to protect themselves in the case of the ten realty companies acting independently. It has also provided for certain financial assistance in bringing the action if the court deems such assistance is proper. Thus the homeowners clearly have remedies for the wrongs committed against them by the ten companies acting independently. The rights must be distinguished from the enforcement procedures.

We conclude that "pattern or practice" must be approached from the point of view of the persons allegedly violating the Act. This was the underlying premise of this court's holding in United States v. Ray Mitchell Realty, Civil No. 13467, (Jan. 27, 1971), that a pattern or practice could be shown by proving a definite inclination on the part of the defendant to make prohibited representations in those areas in which the representations would be effective. If the meaning of a group pattern or practice is to be approached from the defendant's point of view it is not sufficient merely to allege a coincidence of similar §3604(e) representations by several realty companies in a particular geographical area. While this might be a pattern or practice from the homeowner's point of view, it is not a pattern or practice when viewed from the defendant's standpoint. The pattern or practice

must be one on the part of the group acting as a unit. This would require, at the very least, a showing of some coordination of effort on the part of the defendants. Any less standard would provide the Attorney General with enforcement powers over the isolated acts of individual defendants acting independently of each other, merely because these persons' acts coincide in time or place with the acts of other violators. Concerning an isolated violation by a single person acting independently, Congress intended enforcement only by private parties. Should Congress decide that the public interest requires increased enforcement powers for the Attorney General, it may provide them. This court should not.

Defendants Stokes' and Lawrence's motions for summary judgment must now be considered in light of the standard evolved above. None of the affidavits, depositions, or answers to interrogatories show an agreement or conspiracy on the part of the several defendants to do acts violative of §3604(e).[7] The government's affidavits do generally show that the various defendants made representations in

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Interrogatory No. 12 of the government's first interrogatories seems possibly designed to discover acts indicating an agreement or conspiracy or at least a coordination of effort on the part of the several defendants. The interrogatory asks:

> "Please indicate whether or not your company, agents or employees have received any referrals of prospective purchasers or leasees since December 31, 1976, from other real estate companies doing business in the Metropolitan Atlanta area; if affirmative, please supply the following information . . .".

Most of the defendants answered this interrogatory in the negative; defendant Stokes did not answer it at all by consent of government counsel. Defendant Lawrence stated it had received referrals from other real estate companies.

the same transitional area of Atlanta during the spring of 1969. (See, e.g., Affidavits of McGough, Watson, Springfield, Moreman, Laupheimer.) The depositions indicate that several companies displayed for sale signs in the area under consideration. (See, e.g., Deposition of Isabel Wilmer, pp. 10, 25; deposition of Cleo Brown, pp. 7, 12.) The affidavits and depositions also show that the real estate salesmen knew the areas under consideration were transitional. See affidavits of Doris Hammond and Wayne Murrison filed in support of defendant Bob Lawrence's motion for summary judgment and affidavits of Sara Watson, Marion Coker, Mary Springfield, filed by the government in opposition to defendants' motions. These facts possibly give rise to an inference that the various defendants made a coordinated effort to induce the persons in the transitional areas to sell their homes in panic. For this reason defendants' motions for summary judgment concerning the government's claim of a group pattern or practice must be denied.[8]

Defendants' motions for summary judgment are also addressed to the government's claim under the second alternative of §3613: "that [a] group of persons has been denied . . . rights granted by this subchapter and such denial raises an issue of general public importance." A claim based on this alternative does not involve a pattern or practice. It insolves a denial of rights to a group of persons. For the purpose of this motion, Defendant Stokes has admitted that the representations of T. C. Rogers violate the Act. These admissions involve at least six homeowners. In addition the government contends that Agent Betty L. Smith's 213 letters mailed to a transitional area constitute a denial to a group of persons. Issues of fact remain concerning whether those letters constitute unlawful representations, and whether the letters had a significant impact on a "group of persons." These factual issues preclude this court's summary judgment on the issue of whether rights have been denied to a group of persons within the meaning of §3613. To the extent that defendant Lawrence's motion applies to the government's

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Of course on a hearing on the merits, the court may give credence to the inference most reasonably drawn from the facts, rather than draw all inferences against the moving defendants as it must on these motions for summary judgment.

"denial to a group of persons" claim, that motion is also denied, since factual issues remain concerning whether the §3604(e) representations were made to at least three homeowners.

Defendants Stokes and Lawrence also contend that even if they have violated the Act in the past, injunctive relief is no longer appropriate because defendants are no longer in violation of the blockbustint prohibitions. Defendants rely on United States v. W. T. Grant Co., 345 U.S. 629 (1953), in which the Supreme Court affirmed a district court's refusal to issue an injunction against violations of §8 of the Clayton Act. The government had sought an injunction prohibiting interlocking directorates. The defendant resigned from the directorates in question and the district court refused to issue an injunction because it concluded there was not the slightest threat that defendant would attempt any future activity in violation of §8. In this case both Stokes and Lawrence have stated in affidavits that they intend to comply with the provisions of the Fair Housing Amendment. This action is brought against several defendants, and one of the government's claims is that the defendants as a group have violated the Act. Until the issue is put to proof, it is difficult to determine exactly what, if any, activities of the defendants are important in effecting a coordinated effort. For instance, the possible significance of the multiple listing service has not been fully developed. Concerning defendants Stokes and Lawrence, the system of referrals from other realty companies has not been fully disclosed. The court concludes that until the record is further developed, neither the propriety nor the form of any injunctive relief regarding defendants Stokes and Lawrence can be determined.[9] Thus defendants Stokes' and Lawrence's motions for summary judgment on the grounds that injunctive relief is no longer appropriate are denied.

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9 See also, United States v. West Peachtree Corp. (5th Cir., Jan. 4, 1970) (slip opinion), where the Fifth Circuit indicated the defendant's good faith and present disposition in a §3604 case were not determinative concerning whether an injunction should issue.

In summary, the court GRANTS a partial summary judgment for defendant Bob Lawrence Realty on the issue of whether defendant Bob Lawrence Realty has participated in an individual pattern or practice of resistance to rights granted by §3604(e). As to all other issues, the motions of both defendants Bob Lawrence Realty and D. L. Stokes and Company are DENIED.

This 28 day of January, 1971.

/s/ Newell Edenfield
NEWELL EDENFIELD
UNITED STATES DISTRICT JUDGE

ENTERED JANUARY 29, 1971

APPENDEX B

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 72-1655

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

BOB LAWRENCE REALTY, INC., ET AL,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Georgia

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(February 13, 1973)

Before GOLDBERG, AINSWORTH and INGRAHAM, Circuit Judges.

GOLDBERG, Circuit Judge: This case presents the first appellate challenge to the constitutionality of 42 U.S.C. § 3604(e), the "anti-blockbusting" provision of the Fair Housing Act of 1968, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 *et seq.* We find that § 3604(e) falls within the constitutional authority of Congress to enact legislation to enforce the Thirteenth Amendment and that § 3604(e) does not violate

the First Amendment. The District Court enjoined appellant from violating § 3604(e). We affirm.

This action was brought by the Department of Justice pursuant to Title VIII of the Civil Rights Act of 1968, 42 U.S.C. § 3601 *et seq.*, alleging that appellant, Bobby L. Lawrence, President of Bob Lawrence Realty, Inc., and four other Atlanta, Georgia real estate brokers had undertaken "blockbusting" activities prohibited by 42 U.S.C. § 3604(e).[1] The government's complaint seeking injunctive relief arose out of all the defendants' solicitation activities in racially transitional areas in southeast Atlanta. It alleged (1) that the defendants participated, individually and collectively, in a pattern or practice of resistance to the enjoyment of rights granted by the Act, and (2) that a group of persons had been denied rights secured by the Act, raising an issue of general public importance. See, 42 U.S.C. § 3613.[2]

The District Court denied several motions filed by appellant and various other defendants, including motions to dismiss, for a more definite statement, for a jury trial, and for a severance. *United States v. Bob*

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[1] 42 U.S.C. 3604(e) (Section 804(e), Civil Rights Act of 1968)

> SEC. 804. As made applicable by section 803 and except as exempted by sections 803(b) and 807, it shall be unlawful —
>
> • • •
>
> (e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin.

[2] *See*, Part II, *infra*.

Lawrence Realty, Inc., N.D. Ga. 1970, 313 F.Supp. 870, *(Lawrence I)*.[3] Following the denial of these motions, appellant and two other defendants filed separate motions for summary judgment, which the District Court denied. The District Court held, however, that the government's affidavits and documentary evidence were insufficient to make out an "individual pattern or practice" of violations by appellant, and granted summary judgment as to that issue. The District Court also held that triable issues of fact existed as to whether appellant had participated in a "group pattern or practice" of unlawful conduct and as to whether there had been a denial of rights secured by the Act to a group of persons raising an issue of general public importance. *United States v. Bob Lawrence Realty, Inc.*, N.D. Ga. 1971, 327 F.Supp. 487, *(Lawrence II)*.

Shortly before the trial, consent decrees were entered against two of the five original defendants, and the action against a third was dismissed. The case as it pertained to appellant and the other remaining defendant then proceeded to trial. The District Court made the following findings of fact, which are more fully set out in its opinion. *United States v. Mitchell*, N.D. Ga. 1971, 335 F.Supp. 1004.

> Appellant is a real estate broker licensed by the State of Georgia to engage in the listing

[3] Appellant then filed a counterclaim and cross-action against the government seeking attorney's fees and damages for abuse of prosecution and undue litigation.

and selling of real estate,[4] and employs twenty seven sales personnel who act as his agents.[5] During the period with which this action is concerned, appellant did business in the Candler Road - McAfee area in southeast Atlanta. Appellant was aware that this area has been a racially transitional area since 1968, approximately two years before the action was filed. Prior to 1968 the racial composition of the area was all white, but as blacks began moving into the area in 1968, whites began moving out. Two of appellant's sales personnel made representations prohibited by 42 U.S.C. § 3604(e) to four different individuals. Although these representations did not constitute an "individual pattern or practice" of violating the Act, they were made as part of a "group pattern or practice" of violating the Act by all agents in the area.

The District Court did not consider the evidence sufficient to raise an issue of general public importance as required by 42 U.S.C. § 3613 and made no finding as to whether a group of persons had been denied rights

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[4]A real estate broker acts as a middle man in the housing market. Willing sellers list their homes with an individual real estate broker and the real estate broker, through agents, then shows listed homes to potential buyers, presenting the potential buyers' offers to the listing seller. The real estate broker earns a commission from the listing seller only when sales are consummated.

[5]A real estate salesperson's earnings are derived from the commission earned by the real estate broker and increase in direct proportion to the number of houses sold.

under the Act. The District Court also made no finding concerning appellant's counterclaim and cross-action to recover attorney's fees and for damages.

On December 27, 1971, the District Court issued its opinion and order enjoining appellant from further unlawful conduct, from which ruling only appellant appeals.[6]

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[6]The District Court issued the following injunction: "It is therefore considered ordered and adjudged:

"(1) That the defendants and their agents, employees, successors, and all those acting in concert or participation with them, be and they are hereby permanently enjoined from inducing or attempting to induce any person to sell or rent any dwelling by any explicit or implicit representations regarding the entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin;

"(2)a. That the defendants shall instruct each salesman, agent, and employee of the provisions of the Fair Housing Act and of this decree, his obligations and duties thereunder, and that failure to comply with these obligations and duties may result in dismissal or other appropriate action. This instruction shall be given within ten (10) days of the entry of this decree, and thereafter within ten (10) days of hiring of any new salesmen, employees, and agents. The defendants shall secure from each salesman, employee, and agent a signed statement certifying that he understands his obligations and duties not to discriminate against any person on account of race, color, religion, or national origin in relation to the sale or rental of dwellings, or the employment of personnel;

"b. That the defendants shall conduct all solicitation effort in such a manner so that the types and amount of solicitation activity shall be essentially similar in all areas in which the defendants conduct business and the defendants shall not conduct a greater amount or a different type of solicitation in areas which are inhabited by Negroes, or partially inhabited by Negroes, than in areas which are not so inhabited;

On appeal to this Court, appellant launches a scatter gun attack on the District Court's order. As we perceive appellant's brief, he presents four arguments: (1) 42 U.S.C. § 3604(e) is unconstitutional; (2) the Attorney General lacks standing to maintain this

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"c. That the defendants shall make a notation on their records to indicate the race of each person who purchases a house, or sells a house, in the course of their business;

"d. That the defendants in all of their real estate transactions, shall provide their services without distinctions based on race or color;

"(3) That in case of a dispute as to any future charge by plaintiff that this order has been violated by defendants, either individually or jointly, the parties, in an attempt to resolve such dispute, shall attempt to conciliate the matter which is the subject of the allegation within 30 days after the other party has been notified of the alleged violation, and a party shall not apply to this court for additional relief or other appropriate relief within such 30-day period, provided that nothing shall prevent a party from applying to the court in the event that the alleged violation is an explicit violation of the order, as found by the court, and the utilization of the procedure described above would result in irreparable injury to the victim of the alleged discrimination; and

"(4) That this order shall be effective for a period of two years from this date, provided, however, that for good cause shown, the parties may move this court for an extension or modification of the order, as appropriate, upon giving the other party 30 days notice prior to moving for such modification or extension.

"Representatives of the plaintiff shall be permitted to inspect and copy all pertinent records of the defendants at any and all reasonable times, provided, however, that the plaintiff shall endeavor to minimize any inconvenience to the defendants from the inspection of such records."

United States v. Mitchell, *supra*, 335 F.Supp. at 1007-1008.

action; (3) the injunctive relief is improper; and (4) appellant is entitled to recover reasonable attorney's fees.

I. CONSTITUTIONALITY OF SECTION 3604(e)

Blockbusting has been described as a process through which individuals stimulate and prey

> ". . . on racial bigotry and fear by initiating and encouraging rumors that negroes ... [are] about to move into a given area, that all non-negroes . . . [will] leave, and that the market values of properties . . . [will] descend to "panic prices" with residence in the area becoming undesirable and unsafe for non-negroes."

Contract Buyers League v. F & F Investment, N.D. Ill. 1969, 300 F.Supp. 210, 214. *See generally*, Note, *Blockbusting*, 59 Geo. L.J. 170 (1970); Note, *Blockbusting: A Novel Statutory Approach to an Increasingly Serious Problem*, 7 Colum. J. of Law & Soc. Sci. 538 (1971). Blockbusting practices "... constitute a fundamental element in the perpetuation of segregated neighborhoods, racial ghettos, and the concomitant evils which have been universally recognized to emanate therefrom." *Brown v. State Realty Co.*, N.D. Ga. 1969, 304 F.Supp. 1236, 1240. In order to attack this pernicious example of a capitalistic ethic gone astray, Congress enacted 42 U.S.C. § 3604(e), the anti-blockbusting provision of the Fair Housing Act of 1968.[7] Con-

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[7] *See* note 1, *supra*.

gress was aware that as laudable and necessary as the profit motive might be for our socio-economic system, it must on occasion yield to more humane and compassionate mores which are inherent in the system itself, and necessary for its survival.

Appellant argues that § 3604(e) is unconstitutional on two grounds: (A) Congress does not have authority to enact the statute. (B) The statute violates the First Amendment.

A. Congressional Authority

In evaluating appellant's first contention that Congress has no authority to enact § 3604(e), we are given much guidance by the decision of the United States Supreme Court in *Jones v. Mayer Co.*, 1968, 392 U.S. 409, 88 S.Ct. 2186 20 L.Ed.2d 1189. In upholding the constitutionality of 42 U.S.C. § 1982, the Court stated:

> "Our starting point is the Thirteenth Amendment, for it was pursuant* to that constitutional provision that Congress originally enacted what is now § 1982. The Amendment consists of two parts. Section 1 states:
>
> 'Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.' Section 2 provides:
>
> 'Congress shall have power to enforce this article by appropriate legislation.'

"As its text reveals, the Thirteenth Amendment 'is not a mere prohibition of State laws establishing or upholding slavery, but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States.'

... It has never been doubted, therefore, 'that the power vested in Congress to enforce the article by appropriate legislation,' ibid., includes the power to enact laws 'direct and primary, operating upon the acts of individuals, whether sanctioned by State legislation or not.'" ...

"Thus, the fact that § 1982 operates upon the unofficial acts of private individuals, whether or not sanctioned by state law, presents no constitutional problem. If Congress has power under the Thirteenth Amendment to eradicate conditions that prevent Negroes from buying and renting property because of their race or color, then no federal statute calculated to achieve that objective can be thought to exceed the constitutional power of Congress simply because it reaches beyond state action to regulate the conduct of private individuals. The constitutional question in this case, therefore, comes to this: Does the authority of Congress to enforce the Thirteenth Amendment "by appropriate legislation" include the power to eliminate all racial barriers to the acquisition of real and personal property? We think the answer to that question is plainly yes."

> "'By its own unaided force and effect,' the Thirteenth Amendment 'abolished slavery, and established universal freedom'. . . .
>
> Whether or not the Amendment *itself* did any more than that — a question not involved in this case — it is at least clear that the Enabling Clause of that Amendment empowered Congress to do much more. For that clause clothed 'Congress with power to pass *all laws necessary and proper for abolishing all badges and incidents of slavery in the United States*' . . . (Emphasis added.)"

392 U.S. at 437-439, 20 L.Ed.2d at 1206-1207. (Citations and footnotes omitted.)

We think that the mandate of *Jones* is clear. This Court will give great deference, as indeed it must, to the congressional determination that § 3604(e) will effectuate the purpose of the Thirteenth Amendment by aiding in the elimination of the "badges and incidents of slavery in the United States." *Jones v. Mayer Co.*, *supra*, 392 U.S. at 439, 20 L.Ed.2d at 1207; *Brown v. State Realty*, *supra*, 304 F.Supp. at 1240.[8] Appel-

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[8]The Supreme Court has consistently recognized congressional power to legislate in furtherance of the elimination of racial discrimination. *See, Griffin v. Breckenridge*, 1971, 403 U.S. 88, 91 S.Ct. 1790, 29 L.Ed.2d 338 (power under Thirteenth Amendment); *Katzenbach v. McClung*, 1964, 379 U.S. 294, 85 S.Ct. 377, 13 L.Ed.2d 290 (power under interstate commerce); *Katzenbach v. Morgan*, 1966, 384 U.S. 641, 86 S.Ct. 1717, 16 L.Ed.2d 828 (power under Fourteenth Amendment); *South Carolina v. Katzenbach*, 1966, 383 U.S. 301, 86 S.Ct. 803, 15 L.Ed.2d 769 (power under Fifteenth Amendment); *cf. Palmer v. Thompson*, 1971, 403 U.S. 217, 227, 91 S.Ct. 1940, 29 L.Ed.2d 438, 446 (power under Thirteenth Amendment).

lants have failed to present any argument that impugns the reasonableness of the congressional determination. Indeed, no such argument can be made in light of the role that blockbusting plays in creating and in perpetuating segregated housing patterns and thus in preventing "... a dollar in the hands of a Negro . . . [from purchasing] the same thing as a dollar in the hands of a white man." *Jones v. Mayer Co., supra*, 392 U.S. at 443, 20 L.Ed.2d at 1209; *see also*, Note, *Discriminatory Housing Markets, Racial Unconscionability, and Section 1988: The 'Contract Buyers League' Case*, 80 Yale L.J. 516 (1971). We find that the Thirteenth Amendment empowers Congress to enact § 3604(e).[9]

B. Blockbusting and the First Amendment

Appellant contends that § 3604(e) constitutes an unconstitutional prior restraint by Congress on the right to free speech. In rejecting this contention, the court below stated:

> "It is evident that the statute did not make mere speech unlawful. What it does make unlawful is economic exploitation of racial bias and panic selling. We conclude that the statute is one regulating conduct, and that any inhibiting effect it may have upon speech is justified by the Government's interest in protecting its citizens from discriminatory housing

[9]Having found constitutional authority for Congress to enact § 3604(e) in the Thirteenth Amendment, we pretermit any discussion of Congress's authority under either the Commerce Clause or the Fourteenth Amendment.

> practices and is not violative of the First Amendment."

Lawrence I, supra, 313 F.Supp at 872.

We agree with the District Court. As Judge Sobeloff said in *United States v. Hunter*, 4 Cir. 1972, 459 F.2d 205, *cert. denied*, 1972, 34 L.Ed.2d 189, a case that held that 42 U.S.C. § 3604(c) does not violate the First Amendment:

> "It is now well settled that, while 'freedom of communicating information and disseminating opinion' enjoys the fullest protection of the First Amendment, 'the Constitution imposes no such restraint on government as respects purely commercial advertising.' *Valentine v. Chrestensen*, 316 U.S. 52, 54, 62 S.Ct. 920, 921, 86 L.Ed. 1262 (1942). See *Breard v. City of Alexandria*, 341 U.S. 622, 641-645, 71 S.Ct. 920, 95 L.Ed. 1233 (1951); *New York State Broadcasters Ass'n Inc. v. United States*, 414 F.2d 990, 998-999 (2nd Cir. 1969), *cert. denied*, 396 U.S. 1061, 90 S.Ct. 752, 24 L.Ed.2d 755 (1970); *Banzhaf v. FCC*, 132 U.S.App.D.C. 14, 405 F.2d 1082, 1099-1103 (1968), *cert. denied, sub nom. Tobacco Institute, Inc. v. FCC*, 396 U.S. 842, 90 S.Ct. 50, 24 L.Ed.2d 93 (1969); *Capital Broadcasting Co. v. Mitchell*, 33 F.Supp. 582 (D.D.C. 1971), (three-judge court), *aff'd, sub nom. Capital Broadcasting Co. v. Kleindienst, Acting Attorney General*, 405 U.S. 1000, 92 S.Ct. 1289, 31 L.Ed.2d 472 (1972)."

United States v. Hunter, supra, 459 F.2d at 211-212.

Section 3604(e) regulates commercial activity, not speech. The statute is aimed at the commercial activities of those who would profiteer off the ills of society, conduct that the Thirteenth Amendment empowers Congress to regulate. We think the court in *United States v. Mintzes*, D. Md. 1969, 304 F.Supp. 1305, correctly analyzed the statute when it said:

> "The words 'for profit,' as used in section 3604(e) include the purchase of property by prohibited means with the hope of selling it for a larger price, but the words are not limited to such a transaction. They were evidently included in § 3604(e) to distinguish and eliminate from the operation of that subsection statements made in social, political or other contexts, as distinguished from a commercial context, where the person making the representations hopes to obtain some financial gain as a result of the representations. See Halstead v. S.E.C., 86 U.S.App.D.C. 352, 182 F.2d 660, 668 (1950)."

304 F.Supp. at 1312.

Appellant argues that an individual cannot properly be enjoined from making racial representations to obtain the business of a potential seller when the racial statement presents the truth. But it is clear that just as "[t]he state can prohibit the use of the streets for the distribution of purely commercial leaflets, even

though such leaflets may have 'a civic appeal, or a moral platitude' appended," *Jamison v. Texas*, 1943, 318 U.S. 413, 417, 63 S.Ct. 669, 87 L.Ed. 869, 873, the federal government may in some circumstances prohibit *purely commercial* speech made in connection with conduct which Congress can permissibly regulate or prohibit. Any informational value in a statement violative of §3604(e) is clearly outweighed by the government's overriding interest in preventing blockbusting. *See, United States v. O'Brien*, 1968, 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672.

The only "speech" proscribed by § 3604(e) is commercial speech made to gain profit from racial representations. If § 3604(e) were to reach a non-commercial statement, a political statement, or a purely informational statement, it would naturally be subject to First Amendment attack. *See, United States v. Hunter, supra*, 459 F.2d at 212 n. 9. However, it doesn't, and so § 3604(e) does not violate the First Amendment.[10]

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[10]The cases relied on by appellant, such as *New York Times v. Sullivan*, 1964, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686, and *New York Times Co. v. United States*, 1971, 403 U.S. 713, 91 S.Ct. 2140, 29 L.Ed.2d 822, reaffirm the constitutional principle that speech made in a political or informational context deserves the highest degree of protection from governmental restraint. Those cases do not, however, stand for the principle that the government cannot regulate speech made incidental to a purely commercial activity. The motivation for words employed in blockbusting is the profit to be made by the speaker or writer. If the words used to induce selling, with concomitant profits for the broker, had any other motivation, our judicial conscience would be twinged by our devotion to the First Amendment. *See United States v. Hunter, supra*, 459 F.2d at 211 n. 6.

II. STANDING OF THE ATTORNEY GENERAL

42 U.S.C. § 3613 provides:

> "Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice or denial of rights, as he deems necessary to insure the full enjoyment of the rights granted by this title."

The Attorney General thus has standing to sue whenever (1) there is an "individual" or a "group" pattern or practice violative of the Fair Housing Act[11] or (2) whenever a group of persons has been denied

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[11]There is no simple definition of a "pattern or practice," *see, United States v. West Peachtree Tenth Corp.*, 5 Cir. 1971, 437 F.2d 221, 227, however, it is clear that an individual can violate the act by isolated illegal representations not rising to the level of an "individual pattern or practice." *See* 42 U.S.C. § 3604(e).

rights granted by the Act and that denial raises an issue of general public importance.

The District Court found that appellant had not participated in an "individual pattern or practice," but that the evidence established:

> "... by an overwhelming preponderance ... a 'group' pattern or practice by all agents in the area, both defendants and non-defendants, and that some agent or agents of each of the defendants did knowingly participate in such pattern or practice, at least in some measure or to some degree."

United States v. Mitchell, *supra*, 335 F.Supp. at 1006 (footnotes omitted). The District Court found that appellant participated in the "group pattern or practice" when two of his agents made forbidden representations to four individuals. *Id.* The District Court made no finding as to whether or not a group of persons had been denied rights granted by the Fair Housing Act.[12]

As we interpret appellant's brief, he argues that the Attorney General did not have standing to sue him once the District Court found that appellant had not participated in an "individual pattern or practice." Appellant bases this argument on two grounds. He urges: (1) that the Attorney General must prove that appellant participated in an "individual pattern or practice" to have standing to obtain relief for a "group pattern or practice"; and (2) that the Attorney Gen-

---

12*See*, note 13, *infra*.

eral must allege and prove a conspiracy or concerted action in order to have standing to obtain injunctive relief against a "group pattern or practice" of violating the Act.

The clear meaning of § 3613 directly refutes appellant's first contention. Section 3613 authorizes the Attorney General to bring an action in District Court whenever he "has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title. . . ." Unless we are to construe the phrase "group of persons" as totally superfluous, there is no need for each member of the "group of persons" to be engaged in an "individual pattern or practice" of violating the Act before the Attorney General has standing to sue. The statute was thus intended to reach the illegal activities of a group of persons even if the individual members of the group of persons were not engaged in an "individual pattern or practice." We decline to contradict the clear inference of § 3604(e) by adopting appellant's argument.

Appellant's second contention that the "group of persons . . . engaged in a pattern or practice of resistance to the full enjoyment of [§ 3604(e)] . . ." must have engaged in a conspiracy or concerted action before the Attorney General has standing to sue is also erroneous. In considering the meaning of the "pattern or practice" requirement, this Court has said:

> "We turn now to the question whether the 1969 [violations] . . . were isolated incidents

> or part of a pattern or practice of discrimination under the Fair Housing Act of 1968. The Act does not define 'pattern or practice', and the phrase is not explained by the legislative history. Relevant, however, are judicial and legislative interpretations of the phrase under earlier civil rights acts, such as the Civil Rights Act of 1960, 42 U.S.C.A. § 1971(e). The words 'pattern or practice' were not intended to be esoteric words of art. There is nothing magic in their meaning. *United States v. Mayton*, 5 Cir. 1964, 335 F.2d 153, 158-159. To be sure, they were intended to encompass more than an 'isolated or accidental or peculiar event.' *See* Hearings on H.R. 10327 Before the House Committee on the Judiciary, 86th Cong., 2d Sess. 13; *United States v. Mayton, supra*, at 158-159."
>
> "The number of [violations] . . . is not determinative. *United States v. Ramsey*, 5 Cir. 1964, 331 F.2d 824, 837 (concurring opinion). Nevertheless, we do note that in a case brought under the Act involving 'blockbusting,' three § 3604 violations were sufficient to establish a pattern or practice. *United States v. Mintzes*, D. Md. 1969, 304 F.Supp. 1305, 1314-1315. In any event, no mathematical formula is workable, nor was any intended. Each case must turn on its own facts."

United States v. West Peachtree Tenth Corp., 5 Cir. 1971, 437 F.2d 221, 227. Guided by this standard, we must now interpret the terms "pattern or practice"

in the context of a group of persons alleged to be violating § 3604(e).

Blockbusting by its very nature does not require concerted action or a conspiracy to wreak its pernicious damage. There is, for example, no need for XYZ Realty to conspire with ABC Homes to set off a pattern or practice of activities violating the act. The sociological phenomenon of a transitional area[13] is enough to attract blockbusters intent upon culling all the profits that can be derived from the area. The very essence of the phenomenon is that a large number of competi-

---

[13]The District Court found as follows:

> "The evidence at the trial disclosed many illuminating things about what happens in a residential neighborhood when it becomes racially transitional. For example, if these cases are typical — and the court believes they are — the following consequences can be predicted as inevitable, and beyond dispute: First, a sense of panic and urgency immediately grips the neighborhood and rumors circulate and recirculate about the extent of the intrusion (real or fancied), the effect on property values and the quality of education. Second, there are sales and rumors of sales, some true, some false. Third, the frenzied listing and sale of houses attracts real estate agents like flies to a leaking jug of honey. Fourth, even those owners who do not sell are sorely tempted as their neighbors move away, and hence those who remain are peculiarly vulnerable. Fifth, the names of successful agents are exchanged and recommended between homeowners and frequently the agents are called by the owners themselves, if not to make a listing then at least to get an up-to-date appraisal. Constant solicitation of listings goes on by all agents either by house-to-house calls and/or by mail and/or by telephone, to the point where owners and residents are driven almost to distraction."

United States v. Mitchell, supra, 235 F.Supp. at 1005-1006.

tors individually besiege an area seeking to gain a share of the market.

"If there is any doubt as to the meaning of the statute it is our function to construe the language of the statute so as to give effect to the intent of Congress . . . ." *Saxon v. Georgia Ass'n of Ind. Ins. Agents, Inc.*, 5 Cir. 1968, 399 F.2d 1010, 1015. To interpret §3613 as requiring proof of a conspiracy before the Attorney General has standing to seek to enjoin a group pattern or practice of blockbusting would be to seriously restrict the congressional intent to stop blockbusting practices and to unjustifiably restrict the power which Congress gave to the Attorney General to proceed against group patterns or practices. We decline to do so. Even though there may be no "individual pattern or practice" of blockbusting, a "group pattern or practice" of blockbusting is established when a number of individuals utilize methods which violate § 3604(e).

The District Court finding that a group of persons was engaged in a pattern or practice of violating § 3604(e) demonstrates the efficacy of the Attorney General's decision that he had "reasonable cause to believe that any person or group of persons [was] . . . engaged in a pattern or practice of resistance to [§ 3604(e)] . . ." *See, United States v. Ironworkers Local No. 1*, 7 Cir. 1971, 438 F.2d 679, 681-682, *cert. denied*, 1971, 404 U.S. 830, and of the District Court's finding that the Attorney General has standing to sue.[14]

---

[14]In addition, we find that the Attorney General had standing under the second alternative of § 3613. The District Court held:

> In view of the foregoing injunction no ruling is

III. PROPRIETY OF INJUNCTIVE RELIEF

Appellant argues in his brief that:

"The evidence conclusively shows that Bob Lawrence had done everything humanly pos-

---

made on the government's further contention that a group of persons has been denied rights under the Act, first because the evidence here, in the view of the court, is not sufficient to raise an issue of general public importance as required by 42 U.S.C.A. § 3613, and second, because the individuals affected are each assured of a remedy under 42 U.S.C.A. § 3612 in any event.

United States v. Mitchell, supra, 335 F.Supp. at 1008.

This ruling was error. The District Court's specific finding that appellant had violated § 3604(e) shows the denial of the rights of a group of persons, both white and black, to be free from racial inducements to sell and from the results of such racial inducements.

The District Court erred in requiring evidence that an issue of general public importance was presented. It is not for the District Court to determine when an issue of public importance justifying the intervention of the Attorney General is raised. *See United States v. Greenwood Municipal Separate School Dist.*, 5 Cir. 1969, 406 F.2d 1086, 1090. Just as the Attorney General has discretion when to exercise the prosecutorial function in criminal cases, *United States v. Cox*, 5 Cir. 1965, 342 F.2d 167; *Smith v. United States*, 5 Cir. 1967, 375 F.2d 243; *contra*, K. DAVIS, DISCRETIONARY JUSTICE (1969), so too the Attorney General must have a wide discretion to determine when an issue of public importance justifying his intervention under § 3613 is raised. *See Boyd v. United States*, E.D. N.Y. 1972, 345 F.Supp. 790, 794. Once the Attorney General alleged that he had reasonable cause to believe that a violation of § 3604(e) denied rights to a group of persons and that this denial raised an issue of general public importance, he had standing to commence an action in District Court and to obtain injunctive relief upon a finding of a violation of the Act. *See United States v. Northside Realty Assoc.*, 1971, N.D. Ga., 324 F.Supp. 287, 394; *compare United States v. Greenwood Municipal Separate School Dist., supra, with United States v. Ironworkers Local No. 1, supra*, 438 F.2d at 681-682; *but see United States v. Hunter, supra.*

> sible to eliminate any possible violation of *any* act, particularly the 1968 Civil Rights Act. On *one* isolated afternoon in April of 1969 three calls were made on homeowners which did not result in any illegal representation being made. Before that time — no complaint. After that time — no complaint. Without the imminent danger of repetition, there is no equity jurisdiction."

He asks this Court to make the following findings:

> "A finding that injunctive relief is inappropriate to Bob Lawrence.
>
> A finding that Bob Lawrence has committed no prohibited act.
>
> A finding that Bob Lawrence has not engaged in any 'pattern or practice' designed to deny to any person his civil rights."

Appellant's argument that injunctive relief is improper in this action is apparently based on his belief that since he is totally innocent of any violation of the Act, he is being enjoined solely on the basis of activities of other real estate agents in the area, and furthermore, that equity should not intervene because there is no danger that he will violate the Act in the future. The District Court, however, explicitly found: (1) that appellant had violated § 3604(e); (2) that there was a group pattern of violating the Act by all the agents in the area; and (3) that appellant participated in that pattern or practice. *United States v. Mitchell, supra,* 335 F.Supp. at 1006.

Appellant failed to order a transcript of the trial below. As a result, we do not have an adequate record which will permit this Court to find the District Court's fact findings clearly erroneous. In *Green v. Aetna Ins. Co.*, 5 Cir. 1968, 397 F.2d 614, 619, we stated:

> "It is the burden of the appellant under Federal Rule of Civil Procedure 75(b) to 'include in the record a transcript of all evidence relevant to such finding * * *.' 'if [he] intends to urge on appeal that a finding * * * is unsupported by the evidence or contrary to the evidence * * *'. See also, Smith v. United States, 287 F.2d 299 (5 Cir. 1961); Horton v. United States Steel, 286 F.2d 710-713 (5 Cir. 1961) and Rea Const. Co. v. B. B. McCormick and Son, 255 F.2d 257 (5 Cir. 1958).

The District Court finding that appellant violated the Act does not support appellant's inexplicable contention that "he has done nothing wrong," that he is "perfectly innocent himself," and that the trial court recognized "the complete lack of any evidence of any illegal activities on behalf of Bob Lawrence." Appellant's failure to provide this Court with an adequate record precludes us from finding otherwise. *Green v. Aetna Ins. Co., supra; Watson v. Button,* 9 Cir. 1956, 235 F.2d. 235; *Jensen v. United States,* 9 Cir. 1964, 326 F.2d. 891.

Similarly, appellant's argument that an injunction should not have issued because there is no danger that he will violate the Act in the future is misguided.

United States v. W.T. Grant Co., 1953, 345 U.S. 629, 73 S.Ct. 894, 97 L.Ed. 1303, stated the rule of law that governs this case:

> "The case may nevertheless be moot if the defendant can demonstrate that 'there is no reasonable expectation that the wrong will be repeated.'[6] The burden is a heavy one. Here the defendants told the court that the interlocks no longer existed and disclaimed any intention to revive them. Such a profession does not suffice to make a case moot although it is one of the factors to be considered in determining the appropriateness of granting an injunction against the now-discontinued acts.

Along with its power to hear the case, the court's power to grant injunctive relief survives discontinuance of the illegal conduct. Hecht Co. v. Bowles, 321 US 321, 84 L ed 754, 64 S Ct 587, supra; Goshen Mfg. Co. v. Hubert A. Myers Mfg. Co., 242 US 202, 61 L ed 248, 37 S Ct 105 (1916). The purpose of an injunction is to prevent future violations, Swift & Co. v. United States, 276 US 311, 326, 72 L ed 587, 597, 48 S Ct 311 (1928) and, of course, it can be utilized even without a showing of past wrongs. But the moving party must satisfy the court that relief is needed. The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive.

> The chancellor's decision is based on all the circumstances; his discretion is necessarily broad and a strong showing of abuse must be made to reverse it. To be considered are the bona fides of the expressed intent to comply, the effectiveness of the discontinuance and, in some cases, the character of the past violations."

United States v. W. T. Grant Co., supra, 345 U.S. at 633, 97 L.Ed. at 1309-1310.

The District Court found that injunctive relief was appropriate. Appellant has not shown that the District Court abused its discretion. It does not appear that there was no danger of recurrent violation. In fact, before this Court appellant not only denies any unlawful conduct, in the face of the District Court's explicit finding, but even inexplicably denies to this Court that the District Court made such a finding. He persists in claiming that his agents have the right to do in the future what they did in the past. The District Court's broad discretion in granting injunctions in these instances is not easily upset, and in the face of appellant's own inability to recognize his transgressions of the Act, we decline to assume that he will not violate the Act in the future. The District Court correctly exercised its discretion to issue an injunction properly tailored so as to keep interference with appellant's business at a minimum compatible with full compliance with the law. *See, United States v. West Peachtree Tenth Corp., supra;* 437 F.2d at 228-229.

IV. ATTORNEY'S FEES

Appellant's contention that equitable principles require that the government pay its attorney's fees is utterly frivolous. The government's suit was neither harassing nor unmeritorious. Equity does not require that the District Court grant attorney's fees to a party found to have violated a federal statute by blockbusting in a racially transitional area.[15]

V. CONCLUSION

The anti-blockbusting statute, § 3604(e), is an attempt by Congress to disprove the belief, held by many, that the Thirteenth Amendment made a promise the Nation cannot keep. Integrated housing is deemed by many to be an *a priori* requirement before our schools can be realistically integrated. *See generally* Fiss, *Racial Imbalance in the Public Schools: The Constitutional Concepts*, 78 Harv. L. Rev. 564, 585-588 (1965); Report of the United States Commission on Civil Rights, *Racial Isolation in the Public Schools* (1967). Brushing these polemics aside, it is indisputable that white flight is a blight upon the democratized society we envision and this Congressonal Act is in the mainstream of that vision. We hold that § 3604(e) is a constitutional exercise of congressional authority to enact legislation to effectuate the Thirteenth Amendment. Any informational value that may be

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[15]Appellant's citation of Headnote 18 *Grismer et al. v. Merger Mines Corp.*, E.D. Wash. 1942, 43 F.Supp 990, is clearly inapplicable, as are all other authorities cited by appellant. In none of those cases were attorney's fees awarded to a losing party.

found in speech uttered in furtherance of blockbusting is clearly outweighed by the power of Congress to regulate the purely commercial activity of blockbusting. In an attempt to avoid responsibility for violating § 3604(e), appellant has proposed that this Court engraft unnecessary, extraneous requirements upon § 3613, requirements which would hinder the Attorney General's ability to enforce the Fair Housing Act, and which are inconsistent with the language and purpose of § 3613. We refuse to misinterpret § 3613 by reading in requirements not harmonious with the clear intent of the statute. Finding that the District Court properly enjoined appellant from further violation of the Act, we affirm.

AFFIRMED

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc., N. O., La.

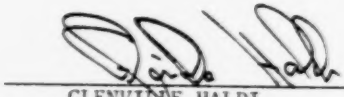
CERTIFICATE OF SERVICE

I certify that I have this date, according to Rule 33 of the Rules of the Supreme Court of the United States, served counsel for the United States of America with three copies of the Petition for Writ of Certiorari herein by depositing same in the United States mail, with adequate first class postage prepaid addressed to:

Carl W. Gabel
Housing Section
Office of David L. Norman
Asst. U. S. Attorney General
United States Department of Justice
Washington, D. C. 20530

The Solicitor General
Department of Justice
Washington, D. C. 20530

This 23rd day of May, 1973.



GLENVILLE HALDI
Attorney for Petitioner

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
MAR 16 1973
EDWARD W. WAINWRIGHT
CLERK

No. 72-1655

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

BOB LAWRENCE REALTY, INC., ET AL,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Georgia

ON PETITION FOR REHEARING

(MARCH 16 , 1973)

Before GOLDBERG, AINSWORTH and INGRAHAM, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby Denied.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1574

BOB LAWRENCE REALTY, INC. AND
BOBBY L. LAWRENCE, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The United States brought this action pursuant to the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 *et seq.*, alleging, *inter alia*, that petitioners and four other real estate companies were individually and as a group engaged in a "pattern or practice" of "blockbusting" in violation of 42 U.S.C. 3604(e). The district court found that petitioners, through their agents, had violated Section 3604(e). The court held that although these violations, viewed alone, did not amount to an individual pattern or practice by the petitioners, they constituted part of a group pattern or practice of "blockbusting" engaged in by all the named de-

fendants.[1] The court therefore enjoined petitioners and their co-defendants from participating in further unlawful conduct (Pet. App. A). The court of appeals affirmed (Pet. App. B).

Petitioners here raise (Pet. 10-11, 13-14) the same constitutional issues with respect to the validity of Section 3604(e) which the court of appeals fully considered and rejected in a thorough opinion on which we rely. Petitioners further contend (Pet. 11-12) that they were denied due process by being found to have participated in an illegal group pattern or practice "when *individually* [they committed] no wrongful act" (Pet. 12; emphasis in original); but since petitioners were expressly found to have violated the statute (Pet. App. A, 3; Order of January 29, 1971), their due process claim lacks foundation in fact.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JUNE 1973.

---

[1]The existence of a "pattern or practice" of unlawful conduct is relevant to the Attorney General's enforcement authority under 42 U.S.C. 3613, but is not an element of the violation of 42 U.S.C. 3604 (e).

FILE COPY

Supreme Court, U. S.
FILED
NOV 8 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 72-1574

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

VS.

BOB LAWRENCE REALTY, INC., et al,
Defendants-Appellants.

MOTION FOR LEAVE TO FILE

GLENVILLE HALDI
Attorney for Defendants-Appellants
1820 Fulton National Bank Building
Atlanta, Georgia 30303
525-8401

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 72-1574

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
VS.
BOB LAWRENCE REALTY, INC., et al,
Defendants-Appellants.

MOTION FOR LEAVE TO FILE

Comes now the Appellants-Defendants, applicants for Certiorari, Bob Lawrence Realty, Inc., et al, and moves this Court to allow them to file a motion for leave to file in the above-styled case from the action of this Court in denying application for certiorari and for grounds thereof shows the following:

1.

Movant shows that they did call the Clerk of this Honorable Court and asked the Clerk what was the filing date for this Motion for Rehearing.

2.

Movant shows that the Clerk of this Honorable Court advised attorney for the Movants that the filing date was Monday, November 5, 1973.

3.

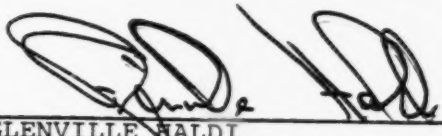
Movant shows that the said Motion for Rehearing was prepared and filed with this Honorable Court on Monday, November 5, 1973.

4.

Movant shows that on Monday, November 5, 1973, they received a call from the Clerk of this Honorable Court stating that the Clerk's office had conveyed the wrong information and that the filing date was in fact, Saturday, November 3, 1973.

WHEREFORE, Movant prays that this Motion be allowed and that they be allowed to file their Motion for Rehearing which was delivered to the Clerk of this Honorable Court on the 5th day of November, 1973.

Respectfully submitted,



GLENVILLE HALDI
Attorney for Defendnats-Appellants

1820 Fulton National Bank Building
Atlanta, Georgia 30303
525-8401

CERTIFICATE OF COUNSEL

I, GLENVILLE HALDI, of counsel for the Appellants, Bob Lawrence Realty, Inc., and Bobby L. Lawrence do certify that this Motion for Leave to File is presented in good faith and not for the purpose of delay and I further certify that the Petition for Rehearing is presented in accordance with Rule 58 of this Honorable Court.

This 6th day of November, 1973.

GLENVILLE HALDI
Attorney for Defendnats-Appellants

1820 Fulton National Bank Building
Atlanta, Georgia 30303
525-8401

CERTIFICATE OF SERVICE

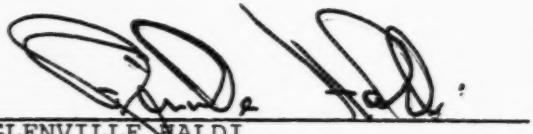
I certify that I have this date, according to Rule 33 of the Rules of the Supreme Court of the United States, served counsel for the United States of America with three copies of the Motion for Leave to File herein by depositing same in the United States mail, with adequate first class postage addressed to:

Carl W. Gabel
Housing Section
Office of David L. Norman
Asst. U.S. Attorney General
United States Department of Justice
Washington, D. C. 20530

and

The Solicitor General
Department of Justice
Washington, D. C. 20530

This 6th day of November, 1973.



GLENVILLE HALDI
Attorney for Defendnats-Appellants

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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 72-1574

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

VS.

BOB LAWRENCE REALTY, INC., et al,
Defendants-Appellants.

PETITION FOR REHEARING

GLENVILLE HALDI
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Atlanta, Georgia 30303
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 72-1574

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

VS.

BOB LAWRENCE REALTY, INC., et al,
Defendants-Appellants.

PETITION FOR REHEARING

Comes now the Appellants, Bob Lawrence Realty, Inc., and Bobby L. Lawrence and moves this Court to grant this Petition for Rehearing filed in support of its application for certiorari and for grounds thereof shows the following:

This petition for rehearing shows to the Court that not only have these applicants been subjected to an imprecise and unclear standard for their conduct but every real estate company operating in this country has no guideline whatsoever by which it can regulate the conduct of their agents or by which they can determine whether or not they are in violation of this

law. Part of the reason for this is the fact that the several orders of the District Court are contradictory and part of the reason is the fact that the approach argued for by the government is contrary to every principle of law used to establish liability.

I. THE DECISIONS OF THE DISTRICT COURT ARE THEMSELVES CONFLICTING AND CONTRADICTORY ON THE DEFINITION AND APPLICATION ON WHAT CONSTITUTES A "PATTERN OR PRACTICE"

The District Court for the Northern District of Georgia has issued three orders in this case and in the related *Ray Mitchell* case:

(A) *U.S. v. Mitchell* (327 F.Supp. 476). This was the first of the three decisions and it established these principles:

> (1) A "pattern or practice" violation is not ". . . merely an isolated, unusual, and unintentional occurrence." (p. 483)
>
> (2) Before the real estate broker (principal) can be held liable for the acts of the individual real estate salesman (agent) under the principles of respondent superior there must be a showing of a willful act on the part of the principal, or, at the very least, "a showing of consciousness that the act is going on or a showing of acquiescence or conscious indifference." (p. 485) (Relevant portions of this opinion are reproduced as Appendix I to this Petition for Rehearing).

(B) *U.S. v. Bob Lawrence Realty, Inc.* (327 F.Supp. 481) which holds:

> (1) The definitions and tests of *Ray Mitchell* (above) were adopted. (p. 489)

(2) "The Court concludes that no Section 3613 pattern or practice has been established on the part of defendant, Bob Lawrence, acting individually. This defendant Lawrence's motion for summary judgment is granted as to this claim." (p. 490)

(3) The Court rejected the government's contention that a group pattern or practice could be shown simply by a similarity of actions. Rather, the Court specifically stated that a group pattern or practice could only be proven by showing ["(T)he pattern or practice must be one on the part of the group acting as a unit. This would require, at the very least, a showing of some coordination of effort on the part of the defendants. Any less standard would provide the Attorney General with enforcement powers over the isolated acts of individual defendants acting independently of each other, merely because these persons' acts coincide in time and place with the acts of other violators."] (p. 493) (Relevant portions of this opinion are reproduced as Appendix I to this Petition for Rehearing).

Up to this point, the Appellant has no quarrel with the rulings of the District Court. It is the third order passed (*U.S. v. Lawrence*, et al, 335 F.Supp. 1004) which we contend is contradictory to the two previous orders. In this third order the District Court found that individual acts of real estate companies coinciding "in time or place with other violators" were sufficient to constitute a "group" pattern or practice, and that the coincidence in time and place ". . . establishes the necessary 'concert' of action . . ."

It must be remembered that the government has always conceded that there was never any principle of law such as conspiracy, respondent superior, interlocking person-

nel, or any other act, conscious or unconscious to tie these various defendants to one another aside from the single fact that they all did business (independently of one another) in the same geographic location.

Also of some note is the fact that the very evidence relied upon by the District Court to find that the Appellant had participated in a group pattern or practice of illegal activities (335 F.Supp. 1004 at 1006, n. 2) was the same evidence relied upon by the District Court in finding that he had not engaged in any individual pattern or practice of discrimination (327 F. Supp. 487 at 489, 490).

II. BY RETREATING FROM THE CONCEPT THAT A GROUP PATTERN OR PRACTICE REQUIRES SOME CONCERT OF ACTION WITH KNOWLEDGE BY THE INDIVIDUAL MEMBERS OF THE GROUP MEANS THAT THE INDIVIDUALS HAVE BEEN DENIED DUE PROCESS

The Government argued from the first that a group pattern or practice could be established by showing only the *cumulative* effect of all of the defendants' action. This point may be perhaps the most important point in the entire case, and this point alone would justify the grant of certiorari to establish to just what extent liability can attach to members of the real estate industry (operating independently of others) for the acts of those others.

We contend that to hold a defendant liable for the acts of other real estate companies when the defendant has no knowledge of and does not in any way act in concert with the other real estate companies must be a prima facia denial of due process, as it attaches lia-

bility without any fault on his part and without any opportunity to take any steps to protect himself.

The real estate broker cannot know what steps to take or how to take any such steps in order to escape any "group pattern or practice" dragnet. He has no contact with, knowledge of, or control over the operations of any other real estate companies.

The District Court's last opinion and its findings of facts are most illustrative on this point. The District Court was impressed by the activities of many real estate companies in this area, most of whom were never named as defendants. However, the *cumulative* effect of all real estate activities in this area clearly seemed to control the conclusions found by the District Court. Also, the conclusions found by the District Court were general conclusions dealing with *all* effects felt in the neighborhood by *all* homeowners, and *all* activities of all real estate companies. There is no specific findings of what these specific defendants did or how they were related to each other or to the final result. Instead, the Court looks to and determines what the final cumulative result is and then concludes that the individual defendants are part of a group pattern or practice because their individual efforts contributed in some way to the final cumulative result.

This was a reversal of the rule pronounced earlier by the District Court:

> "The pattern or practice must be one on the part of the group acting as a unit. This would require, at the very least, a showing of some coordination of effort on the part of the defendants."
> (327 F.Supp. 487 at 493)

We respectfully submit that the demands of due process will not allow liability to attach based on a deductive application of the cumulative result approach. Rather, the method of determining liability must proceed from an analysis of the alleged illegal acts themselves.

In no other way can a real estate operator protect himself and take the necessary steps to comply with the law.

Thus, the District Court has used two different standards of determining liability in this case, and these two standards are contradictory and inconsistent. In the two early orders, the District Court stated that a real estate company would be in violation of the Act only if the defendant consciously acted in coordination with other real estate companies, and it was these joint activities which would make a "pattern or practice."

However, in its last order the District Court found liability after expressly finding that there was no coordination of effort with any other real estate company and after expressly finding that the acts alleged against this defendant's salesman was an isolated, unusual, and unrepeated instance.

No real estate company can in any way reasonably structure its business operations in such a way as to be certain it is not in violation of the law under this last decision. This aspect of the case makes this case of widespread general importance having impact and effect in every state upon every real estate company.

III. THE CASE IS NOT MOOT

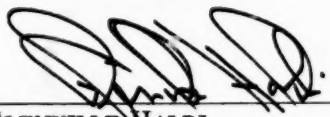
Originally this case was decided in December of 1971, and the injunctive period was to extend through De-

cember of 1973. In a subsequent unpublished opinion, the period of the injunction has been extended through December of 1975. Hence, there is no element of mootness to this decision under review in this case.

IV. THE CASE DOES NOT REQUIRE AN EXAMINATION OF THE EVIDENCE

The matters raised in the application for certiorari do not require a transcript of the evidence. They are all based on rulings of the District Court, uncontroverted facts, and admissions of the Government.

Respectfully submitted,



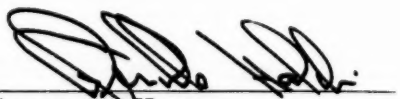
GLENVILLE HALDI
Attorney for Defendants-Appellants

1820 Fulton National Bank Building
Atlanta, Georgia 30303
525-8401

CERTIFICATE OF COUNSEL

I, GLENVILLE HALDI, of counsel for the Appellants, Bob Lawrence Realty, Inc., and Bobby L. Lawrence do certify that this Petition for Rehearing is presented in good faith and not for the purpose of delay and I further certify that the Petition for Rehearing is presented in accordance with Rule 58 of this Honorable Court.

This 23rd day of October, 1973.



GLENVILLE HALDI
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CERTIFICATE OF SERVICE

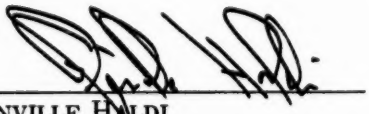
I certify that I have this date, according to Rule 33 of the Rules of the Supreme Court of the United States, served counsel for the United States of America with three copies of the Petition for Rehearing herein by depositing same in the United States mail, with adequate first class postage addressed to:

Carl W. Gabel
Housing Section
Office of David L. Norman
Asst. U.S. Attorney General
United States Department of Justice
Washington, D. C. 20530

and

The Solicitor General
Department of Justice
Washington, D. C. 20530

This 2nd day of November, 1973.



GLENVILLE HALDI
Attorney for Defendants-Appellants

APPENDIX A

IN THE

United States District Court

NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

UNITED STATES OF AMERICA VS. RAYMOND C. MITCHELL, d/b/a RAY MITCHELL REALTY	)	CIVIL ACTION NO. 13467

ORDER

EDENFIELD, District Judge.

This is a "blockbusting" case brought by the Attorney General pursuant to 42 U.S.C.A. § 3613 alleging Defendant Ray Mitchell Realty Company has violated the provisions of 42 U.S.C.A. § 3604(e) and seeking an injunction to prohibit further violations. Defendants have moved for summary judgment on the following grounds:

(1) The acts alleged by plaintiff are not prohibited representations within the meaning of 42 U.S.C.A. § 3604(e);

(2) The acts alleged do not indicate a sufficient basis for the initiation of this suit by the Attorney General under either of the alternatives of 42 U.S.C.A. § 3613;

(3) The representations allegedly made by defendants are exempt from the operation of § 3604(e) by § 3603(b) (1);

(4) The defendants did not have the necessary intent to violate the Act;

(5) The Attorney General is barred from maintaining this action by the doctrine of laches; and

(6) Injunctive relief in this case would constitute an unconstitutional prior restraint on defendants' right to speech.

Defendants' primary contention on their motion for summary judgment is based on both the statutory limits on the Attorney General's right to initiate an action pursuant to 42 U.S.C.A. § 3613 and on the definition of prohibited acts in 42 U.S.C.A. § 3604(e). First, defendants contend that most of the representations alleged by plaintiff do not constitute prohibited representations under § 3604(e) which provides:

> " * * * [I]t shall be unlawful –
>
> "(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin."

Secondly, defendants argue that even if the alleged acts were violations of the Act, the Attorney General may not proceed under the so-called "first alternative" of 42 U.S.C.A. § 3613 [1] because the acts are not suffi-

[1] The Attorney General may bring a civil action when he has reasonable cause to believe "that any person or group of persons is engaging in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this subchapter." 42 U.S.C.A. § 3613.

cient in number to constitute the "pattern or practice" of resistance that is a requisite to the Attorney General bringing an action under the "first alternative." Defendants contend the Attorney General may not proceed under the so-called "second alternative" of 42 U.S.C.A. § 3613 [2] because the plaintiff has not alleged acts which deny to groups of persons rights guaranteed by the Act. Because material issues of fact remain concerning all of these issues, summary judgment is denied. * * *

Defendants' second basic contention is that the acts and words attributed to defendants' salesmen do not constitute the "pattern or practice" required by the so-called "first alternative" of 42 U.S.C.A. § 3613 as a requisite for the Attorney General initiating this action. Defendants argue that the words "pattern or practice" were placed in § 3613 to limit the Attorney General's interference to those cases in which the resistance to rights guaranteed by the Act is part of a repeated widespread practice and policy of a particular defendant. The government argues that the "pattern or practice" limitation must be construed narrowly. The government would interpret the section as allowing intervention by the Attorney General in those cases in which it could be shown that the actions of defendant's agents "happened in the regular procedure followed by the defendant."

Before determining the motion for summary judgment, this court must attempt a definition of the "pat-

[2] The Attorney General may bring a civil action when he has reasonable cause to believe "that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance." 42 U.S.C.A. § 3613.

tern or practice" limitation in § 3613. The most obvious place to look for guidance is in the proceedings and debates of both houses of Congress when the bodies were considering the Act. The Civil Rights Act of 1968 was passed in the days following the assassination of Dr. Martin Luther King, and in the midst of the "poor peoples' march" on Washington, D. C. The "open housing" amendment was added by the Senate to H.R. 2516, a house antiriot bill altering the provisions of 18 U.S.C.A. §§ 241, 245. The Congressional Record reveals little real discussion of the provisions of the Senate's open housing amendment. The amended bill was referred back to the House and the House approved the Senate amendments without referring the matter to a conference committee. Consequently, the proceedings are not enlightening concerning the meaning of "pattern or practice." Apparently the only judicial construction of the statute that has been reported is the construction by the court in *United States v. Mintzes;* 304 F.Supp. 1305 (D.Md.1969). In *Mintzes* the Court held that the defendant real estate companies had been engaged in a "pattern or practice" of resistance. The Court said:

> "In the present case defendants made unlawful representations to the owners of three properties. In several instances the representations were repeated during a long interview and reiterated in subsequent telephone conversations. They were not made *accidentally or as isolated instances,* but were made intentionally and deliberately as part of an effort to assemble a group of properties for an apartment house. The evidence before the Court indicates *a disposition on the part of defendants to use racial representations in circumstances where it appears that such representations may be effective in inducing the owner to sell.*" 304 F.Supp. at 1314.

The focus of the Court in *Mintzes* seemed to be on whether the representations were isolated instances or recurring acts. The *Mintzes* Court also considered the construction by the Fifth Circuit in United States v. Mayton, 335 F.2d 153, of a similar "pattern or practice" provision in the Civil Rights Act of 1960, 42 U.S.C.A. § 1971(e).[3] In *Mayton* the Fifth Circuit has interpreted the "pattern or practice" language in the 42 U.S.C.A. § 1971(e) as follows:

> "The words 'pattern or practice' were not intended to be words of art. No magic phrase need be said to set in train the remedy provided in § 1971(e). Congress so understood them. And the legislative history reflects the adoption of the approach epitomized by Deputy Attorney General Walsh before the House Judiciary Committee:
>
> " 'Pattern or Practice have their generic meanings. In other words, the court finds that the discrimination was not an isolated or accidental or peculiar event; that it was an event which happened in the regular procedures followed by the state officials concerned.' Hearings Before the House Committee on the Judiciary on H.R. 10327, 86th Cong., 2d Sess. 13." 335 F.2d at 158-159.

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[3] Subsection (e) provides as follows: "In any proceeding instituted pursuant to subsection (c) of this section in the event the court finds that any person has been deprived on account of race or color of any right or privilege secured by subsection (a) of this section, the court shall upon request of the Attorney General and after each party has been given notice and the opportunity to be heard make a finding whether such deprivation was or is pursuant to a pattern or practice. If the court finds such pattern or practice, any person of such race or color resident within the affected area shall, for one year and thereafter until the court subsequently finds that such pattern or practice has ceased, be entitled, upon his application therefor, to an order declaring him qualified to vote, upon proof that at

No doubt, the government draws its interpretation of "pattern or practice" from the quote above. . . .

The "pattern or practice" provisions involved in 42 U.S.C.A. § 1971(e) and 42 U.S.C.A. § 2000e-6(a) involve limitations on the Attorney General's enforcement powers just as the provisions in § 3613 involved here. The meaning of "pattern or practice" in § 3613 would seem quite similar to the meaning in the statutes discussed above. Here the government argues that intervention by the Attorney General should be allowed if it can be shown that a prohibited representation occurred in the regular procedures of the defendant. But under the quoted language this is not enough. Clearly, a representation could occur in the regular procedures of the defendant and still be isolated (*Mintzes*, testimony of Humphrey and Walsh, *supra*), accidental (*Mintzes; Mayton*), unintentional (*Mintzes*), or unusual (testimony of Walsh). Under these authorities the Attorney General would have to show on the contrary that representation was repeated (*Mintzes*, testimony of McClelland and Humphrey), intentional and deliberate (*Mintzes*), usual (testimony of Walsh), and that the conduct of the defendant showed a disposition on its part to use such representations where and when they would appear to be effective.

These questions also pose some others: In how many

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any election or elections (1) he is qualified under State law to vote, and (2) he has since such finding by the court been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. Such order shall be effective as to any election held within the longest period for which such applicant could have been registered or otherwise qualified under State law at which the applicant's qualifications would under State law entitle him to vote."

areas did the defendant operate? How many of them were transitional areas? Was its manner of doing business (advertising, for example) the same in all areas? How many agents (salesmen) does the defendant have? What percentage of these salesmen made representations? Did the defendant know or learn of the representations made by his salesmen? If so, what did he do to correct the situation?

Properly administered, this is a good law. Those charged with the administration of its injunctive features, however, including the courts, must bear certain things in mind; otherwise overenforcement could easily become tyranny. Dealing in real estate is a legitimate business. It is well to bear in mind, also, that real estate agents did not invent racial or religious prejudice, and that they neither can nor should be prohibited from carrying on their business in a transitional neighborhood merely because such prejudices exist there—provided always that they obey the law. At the same time, what can and should be prohibited and, in the view of the court, what this law seeks to prohibit, are the actions and purposes of those economic vultures who either deliberately, carelessly, or repeatedly prey upon the fears and prejudices of homeowners for profit.

All of this puts a very heavy burden on all concerned with this law. First, it puts a heavy burden on those in charge of real estate offices in choosing and supervising their salesmen, in cautioning them about their conduct and the requirements of this statute, and in taking prompt and effective action to insure that if an isolated violation does occur, it does not recur. Second, the Act places a heavy burden upon the government and its administrators to make sure before seeking a

sweeping injunction that the spirit of the Act has really been violated and that the proof in every case shows a real pattern or practice in violation of the Act and not merely an isolated, unusual, and unintentional occurrence. Finally, the determination of each such case by the court requires a discriminating judgment, not the mere application of an automatic formula or a rule of thumb. Scarcely ever, therefore, in the view of this court, can such a case be decided summarily or without a full trial with all its nuances, where all the circumstances and credibility of each witness can be weighed and correct inferences drawn. For all of these reasons the motion for summary judgment on the pattern or practice issue will be denied.

* * *

APPENDIX B

IN THE

United States District Court

NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA VS. BOB LAWRENCE REALTY, INC., BOBBY L. LAWRENCE, president; D. L. STOKES AND COMPANY, INC., PETER M. LYNCH, president; MRS. FRANCES HEIMERICH, d/b/a EARL JACKSON REALTY COMPANY; REEVES AND REEVES, INC., FRED J. REEVES, president; and MRS. RUTH STANLEY, d/b/a STANLEY REALTY COMPANY	CIVIL ACTION NO. 13468

ORDER

In this blockbusting case brought pursuant to 42 U.S.C.A. § 3613, the government bases its complaint on three claims. The first two are based on the so-called "first alternative" of 42 U.S.C.A. § 3613 which allows the Attorney General to bring an action when he "has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any rights granted"

by the Fair Housing Amendment to the Civil Rights Act of 1968. First, the government argues that the acts of the several defendants, considered cumulatively, constitute action by a group of persons engaged in a pattern or practice of resistance to rights granted by 42 U.S.C.A. § 3604(e). Second, the government alleges that the acts of the various defendant realty companies, considered individually, constitute a prohibited "pattern or practice" on the part of each of the defendants. The third claim of the complaint is based on the so-called "second alternative" of 42 U.S.C.A. § 3613 which allows the Attorney General to bring an action in any case in which he has reasonable cause to believe "that any group of persons has been denied any of the rights granted by this subchapter and such denial raises an issue of general public importance. . . ." Under this alternative the Attorney General alleges that defendants have denied to groups of homeowners, rights granted by 42 U.S.C.A. § 3604(e) [1] and that this denial raises an issue of general public importance. Defendants D. L. Stokes and Bob Lawrence have moved for summary judgment, and the case is presently before the court for consideration of these motions.

Before considering the motions individually some standards should be set out. In *United States v. Ray Mitchell Realty Co.*, Civil Action No. 13467, Jan. 27, 1971, this court indicated its approach in identifying a prohibited "representation" within the meaning of § 3604(e) and a "pattern or practice" within the mean-

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[1] Section 3604(e) of Title 42 U.S.C.A. provides: "For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin."

ing of § 3613. In considering whether an act constituted a § 3604(e) representation this court said it would look to all the surrounding circumstances and apply a sort of "reasonable man" standard. The test would be whether a reasonable man, under all the circumstances, would regard the acts and words of the defendant as constituting an inducement to sell his home because members of a minority group were moving into the neighborhood. Of course the inducement would have to be made for profit. In defining "pattern or practice" this court said that the Attorney General must show that the defendants had a definite inclination to make prohibited representations in those areas where the representation would be effective. The court indicated that in order to establish this definite inclination, the Attorney General must show that the prohibited representations were more than a mere isolated occurrence; rather, he must show recurring acts of unlawful representation. The approaches developed in *Ray Mitchell* regarding the § 3604(e) representation and the § 3613 pattern or practice will be applied in this case.

The court will first consider defendants' motions in the context of the government's claim that each defendant's individual actions constitute a pattern or practice or prohibited § 3604(e) representations. The government's case against Defendant Bob Lawrence is based on three allegedly prohibited representations made by Mrs. Doris Hammond and Mr. Wayne Murrison to residents of Juanita Street in Southeast Atlanta. (Plaintiff's Answer to Lawrence's Interrogatory No. 2.) The affidavits and depositions filed create issues of fact concerning whether the acts and words of agents Hammond and Murrison were § 3604(e) representations. In many cases, these factual issues would pre-

clude summary judgment. However, in the case of Defendant Lawrence, the crucial question is whether the government's allegations, even if true, show a definite inclination on the part of Defendant Lawrence to make prohibited representations in those cases in which the representations would be effective. It is to this pattern or practice determination that the court directs its attention.

Historically, the main area of concentration of Bob Lawrence Realty has been an area of Atlanta that is now transitional. Bob Lawrence Realty did not move into the area after the transition from white to black had begun. Rather, Defendant Lawrence's company was active in the area before it ever became "transitional." (Affidavits of Lawrence, Hammond, Murrison.) Indeed, Lawrence's office is located in the transitional area. (Affidavit of Lawrence.) The three representations relied on by the government were made by Agents Hammond and Murrison to three residents of Juanita Street. (Plaintiff's Answer to Lawrence's Interrogatory No. 2.) The representations were made by the agents working together on the same afternoon. (Affidavits of Hammond and Murrison.) None of the three persons contacted were ever contacted again by agents of Bob Lawrence Realty. (Depositions of Brown, Wilmer, and McCrum.) Only one sign of Bob Lawrence Realty had ever been seen in the area. (Deposition of Brown, p. 8.) On the basis of these facts, this court cannot conclude that the government has alleged facts which show a definite inclination on the part of Bob Lawrence Realty to make prohibited representations. Though most of Lawrence's real estate activity has always been in areas that are now transitional, the

government has alleged only three blockbusting representations. These violations were committed by two agents, working together. The representations were made on the same afternoon; there is no indication they were repeated by Agents Hammond or Murrison, or any other agents of Bob Lawrence. When compared with Bob Lawrence Realty's total activity in the area, the three representations relied on by the government appear to be isolated incidents. The court concludes that no § 3613 pattern or practice has been established on the part of Defendant Bob Lawrence, acting individually. Thus Defendant Lawrence's motion for summary judgment is granted as to this claim.

* * *

The government's second claim is that all of the defendants have done acts which cumulatively amount to a pattern or practice of resistance to rights granted by 42 U.S.C.A. § 3604(e). The government contends in its original brief that " [A]ll of the defendants, while operating in Southeast Atlanta and DeKalb County have engaged in one general pattern or practice of resistance to the full enjoyment of rights secured by 42 U.S.C.A. § 3604(e). Nor does this mean that the several defendants consciously conspired to engage in any particular activity. The substance of the complaint is that individual defendants, during the same period of time made unlawful representations to residents of the same general area for the same purpose–profit–and predictably, with the same results. . . . [O]ur burden under 42 U.S.C.A. § 3613 can be met by a demonstration at the trial that the cumulative efforts of all the defendants' unlawful activities contributed generally to the alleged resistance to federal law." Defendant D. L.

Stokes argues that the government cannot prove its pattern or practice case under 42 U.S.C.A. § 3613 by simply cumulating the activities of several defendants.

In determining whether the acts of various individual defendants may be cumulated to constitute a group pattern or practice, the court must first attempt a "plain meaning" interpretation of the statute. A literal reading of § 3613 reveals no requirement that the government allege and prove a conspiracy in order to bring an action against several defendants. What the statute does require is that the Attorney General allege and prove a prohibited pattern or practice of activity on the part of a person, in the case of an action against a single defendant, or a prohibited pattern or practice on the part of a group, if the action is brought against a group collectively. In an action brought against a group, the "plain meaning" interpretation of the statute indicates that it is the action of the group as a unit that must constitute a pattern or practice.[5]

This plain meaning interpretation must now be tested against the purpose of the statute as revealed in the legislative history and in the interests the statute was intended to affect. The legislative history of the section is not enlightening.[6] Consequently, neither party has

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[5] This interpretation seems evident upon analysis of the clause involved. "Person" and "group" are correlatives. The phrase "of persons" following "group" is a prepositional phrase identifying the content of the group. The statute provides an either/or situation. If either a person or a group is involved in a pattern or practice, the Attorney General may initiate an action.

[6] The original bill passed by the House did not contain a fair housing provision. The House Bill was considered by the Senate in the days following the assassination of Dr. Martin Luther King and in the midst of the "poor peoples' march" on Washington. The Senate added the fair housing amendment to the

relied on this history as really supporting an interpretation of the statute regarding the issue under consideration. The interests protected by the statute are identifiable. The first four subsections of § 3604 protect the purchaser from various types of discrimination in the selling of homes. Section 3604(e) protects the homeowner from racial and certain other representations made for profit by third parties to induce a homeowner to sell in panic. To protect these homeowner's rights, Congress has prohibited representations that lead to infringement of the rights. The Act provides three methods of enforcement. A private party may file a complaint with the Secretary of Housing and Urban Development and initiate conciliation procedures which may eventually develop into a court action; a private party may initiate a civil suit directly in the United States district courts or in state courts; the Attorney General may initiate a civil suit in United States district courts. A private party may initiate a civil action if any of his rights granted by §§ 3603, 3604, 3605 or 3606 are violated, including a single § 3604(e) representation. 42 U.S.C.A. § 3612(a). The court may appoint an attorney for the private litigant whose rights have been infringed "in such circumstances as the court may deem just"; and the court may also allow the private litigant to proceed without payment of fees, costs or security. 42 U.S.C.A. § 3612(b). The

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House Bill and sent the amended bill back to the House. In the House, the amended bill was passed via a "unanimous consent" resolution which sent the bill to the President without debate in the House and without a conference regarding the Senate amendment. Nowhere in the legislative proceedings were the issues under consideration here discussed by the legislators. *But see* discussion of somewhat similar provisions of the 1960 and 1964 Civil Rights Acts in *United States v. Mitchell* (N.D. Ga., Jan. 27, 1970) pp. 10-14 (slip opinion).

court may grant equitable relief as well as damages to the private party, and it may allow a prevailing plaintiff to receive court costs and attorney's fees where the private party is not financially able to assume the legal fees. 42 U.S.C.A. § 3612(c). The Attorney General is more limited in the circumstances in which he may initiate an action. He must have:

(1) reasonable cause to believe that

(2) (a) a person or group of persons is engaged in a pattern or practice of resistance to rights granted by the Act

or

(b) a group of persons has been denied rights granted by the Act and such denial raises an issue of general public importance. (42 U.S.C.A. § 3613.)

Under the pattern or practice provision, the Attorney General cannot bring an action for one isolated violation as can a private party. Under the "denial to a group of persons" provision the Attorney General cannot bring an action where only one person has been harmed, as can the private person to whom the prohibited representation was made.

It is important to remember that the above limitations on the Attorney General do not involve the rights of the homeowners damaged by § 3604(e) representations; rather, the limitations relate to the enforcement procedures chosen by Congress. The disagreement between the Attorney General and defendants basically involves a difference in point of view. The Attorney General seems to approach "pattern or practice" from the point of view of the homeowner. The moving defendants approach "pattern or practice" from the point

of view of the realty company. To support the Attorney General's approach, it could be argued quite persuasively that it makes little difference in end result whether one realty company makes a § 3604(e) representation to ten different homeowners on a street or ten different realty companies acting independently each make on § 3604 representation to a different homeowner on the street. The potential end result is the same: panic selling on the part of homeowners, instability in the neighborhood, and ultimate resegregation. Thus, the Attorney General should be allowed to act for the homeowners in either situation. The answer to this argument is that it focuses on the rights rather than the procedure for enforcement of the rights.

Congress has provided two ways for private homeowners to protect themselves in the case of the ten realty companies acting independently. It has also provided for certain financial assistance in bringing the action if the court deems such assistance is proper. Thus the homeowners clearly have remedies for the wrongs committed against them by the ten companies acting independently. The rights must be distinguished from the enforcement procedures.

We conclude that "pattern or practice" must be approached from the point of view of the persons allegedly violating the Act. This was the underlying premise of this court's holding in *United States v. Ray Mitchell Realty*, Civil No. 13467, (Jan. 27, 1971), that a pattern or practice could be shown by proving a definite inclination on the part of the defendant to make prohibited representations in those areas in which the representations would be effective. If the meaning of a group pattern or practice is to be approached from

the defendant's point of view it is not sufficient merely to allege a coincidence of similar § 3604(e) representations by several realty companies in a particular geographical area. While this might be a pattern or practice from the homeowner's point of view, it is not a pattern or practice when viewed from the defendant's standpoint. The pattern or practice must be one on the part of the group acting as a unit. This would require, at the very least, a showing of some coordination of effort on the part of the defendants. Any less standard would provide the Attorney General with enforcement powers over the isolated acts of individual defendants acting independently of each other, merely because these persons' acts coincide in time or place with the acts of other violators. Concerning an isolated violation by a single person acting independently, Congress intended enforcement only by private parties. Should Congress decide that the public interest requires increased enforcement powers for the Attorney General, it may provide them. This court should not.

Defendants Stokes' and Lawrence's motions for summary judgment must now be considered in light of the standard evolved above. None of the affidavits, depositions, or answers to interrogatories show an agreement or conspiracy on the part of the several defendants to do acts violative of § 3604(e).[7] The government's affi-

[7] Interrogatory No. 12 of the government's first interrogatories seems possibly designed to discover acts indicating an agreement or conspiracy or at least a coordination of effort on the part of the several defendants. The interrogatory asks:

> "Please indicate whether or not your company, agents or employees have received any referrals of prospective purchasers or leasees since December 31, 1970, from other real estate companies doing business in the Metropolitan Atlanta area; if affirmative, please supply the following information . . . ".

davits do generally show that the various defendants made representations in the same transitional area of Atlanta during the spring of 1969. (*See*, e.g., Affidavits of McGough, Watson, Springfield, Moreman, Laupheimer.) The depositions indicate that several companies displayed for sale signs in the area under consideration. (*See*, e.g., Deposition of Isabel Wilmer, pp. 10, 25; deposition of Cleo Brown, pp. 7, 12.) The affidavits and depositions also show that the real estate salesmen knew the areas under consideration were transitional. *See* affidavits of Doris Hammond and Wayne Murrison filed in support of defendant Bob Lawrence's motion for summary judgment *and* affidavits of Sara Watson, Marion Coker, Mary Springfield, filed by the government in opposition to defendants' motions. These facts possibly give rise to an inference that the various defendants made a coordinated effort to induce the persons in the transitional areas to sell their homes in panic. For this reason defendants' motions for summary judgment concerning the government's claim of a group pattern or practice must be denied.[8]

Defendants' motions for summary judgment are also addressed to the government's claim under the second alternative of § 3613: "that [a] group of persons has been denied . . . rights granted by this subchapter and such denial raises an issue of general public importance."

Most of the defendants answered this interrogatory in the negative; defendant Stokes did not answer it at all by consent of government counsel. Defendant Lawrence stated it had received referrals from other real estate companies.

[8] Of course on a hearing on the merits, the court may give credence to the inference most reasonably drawn from the facts, rather than draw all inferences against the moving defendants as it must on these motions for summary judgment.

A claim based on this alternative does not involve a pattern or practice. It involves a denial of rights to a group of persons. For the purpose of this motion, Defendant Stokes has admitted that the representations of T. C. Rogers violate the Act. These admissions involve at least six homeowners. In addition the government contends that Agent Betty L. Smith's 213 letters mailed to a transitional area constitute a denial to a group of persons. Issues of fact remain concerning whether those letters constitute unlawful representations, and whether the letters had a significant impact on a "group of persons." These factual issues preclude this court's summary judgment on the issue of whether rights have been denied to a group of persons within the meaning of § 3613. To the extent that defendant Lawrence's motion applies to the government's "denial to a group of persons" claim, that motion is also denied, since factual issues remain concerning whether the § 3604(e) representations were made to at least three homeowners.

Defendants Stokes and Lawrence also contend that even if they have violated the Act in the past, injunctive relief is no longer appropriate because defendants are no longer in violation of the blockbusting prohibitions. Defendants rely on *United States v. W. T. Grant Co.*, 345 U.S. 629 (1953), in which the Supreme Court affirmed a district court's refusal to issue an injunction against violations of § 8 of the Clayton Act. The government had sought an injunction prohibiting interlocking directorates. The defendant resigned from the directorates in question and the district court refused to issue an injunction because it concluded there was not the slightest threat that defendant would attempt

any future activity in violation of § 8. In this case both Stokes and Lawrence have stated in affidavits that they intend to comply with the provisions of the Fair Housing Amendment. This action is brought against several defendants, and one of the government's claims is that the defendants as a group have violated the Act. Until the issue is put to proof, it is difficult to determine exactly what, if any, activities of the defendants are important in effecting a coordinated effort. For instance, the possible significance of the multiple listing service has not been fully developed. Concerning defendants Stokes and Lawrence, the system of referrals from other realty companies has not been fully disclosed. The court concludes that until the record is further developed, neither the propriety nor the form of any injunctive relief regarding defendants Stokes and Lawrence can be determined.[9] Thus defendants Stokes' and Lawrence's motions for summary judgment on the grounds that injunctive relief is no longer appropriate are denied.

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[9] *See also, United States v. West Peachtree Corp.* (5th Cir., Jan. 4, 1970) (slip opinion), where the Fifth Circuit indicated the defendant's good faith and present disposition in a § 3604 case were not determinative concerning whether an injunction should issue.

In summary, the court GRANTS a partial summary judgment for defendant Bob Lawrence Realty on the issue of whether defendant Bob Lawrence Realty has participated in an *individual* pattern or practice of resistance to rights granted by § 3604(e). As to all other issues, the motions of both defendants Bob Lawrence Realty and D. L. Stokes and Company are DENIED.

This 28th day of January, 1971.

/s/ NEWELL EDENFIELD
NEWELL EDENFIELD
UNITED STATES DISTRICT JUDGE

ENTERED JANUARY 29, 1971

APPENDIX C

IN THE

United States District Court

NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

UNITED STATES OF AMERICA VS. RAYMOND C. MITCHELL, d/b/a RAY MITCHELL REALTY	CIVIL ACTION NO. 13467
UNITED STATES OF AMERICA VS. BOB LAWRENCE REALTY, INC. BOBBY L. LAWRENCE, president and MRS. RUTH STANLEY, d/b/a STANLEY REALTY COMPANY	CIVIL ACTION NO. 13468

ORDER

In these "blockbusting" suits in each of which motions for complete summary judgment have previously been denied,[1] the Attorney General originally sought injunctive relief against six Atlanta real estate firms for allegedly engaging, for profit, in a pattern or prac-

[1] *United States v. Mitchell*, 327 F. Supp. 476 and United States v. Bob Lawrence, 327 F.Supp. 487.

tice of inducing or attempting to induce persons to sell or rent their homes by representations regarding the entry or prospective entry into the neighborhoods of persons of a particular race, color, religion or national origin, in violation of the Fair Housing Act of 1968, sections 3604 and 3613 of Title 42 of the United States Code. As part of such actions the government also claimed that the defendants had deprived a group of persons of their rights as guaranteed by that Act. Three of the cases were disposed of by consent before trial and the three remaining cases were tried before the court without a jury on October 4 through 14, 1971.

All of the defendants are real estate brokers licensed by the State of Georgia to engage in the listing and selling of real estate. Each is the sole proprietor of the company bearing his (or her) name.

Defendant Mitchell employs approximately 80 sales persons or agents, about one-half of whom are part-time, the others being regular full-time employees. Defendant Stanley employs 14 agents and Lawrence 27. Each defendant, through its sales people, acts as agent for listing sellers and presents offers (contracts) on behalf of potential buyers, earning commissions from the sellers only when sales are consummated. Almost all such sales involve single-family dwellings. All of the defendants and all agents are white.

The earnings of real estate salesmen are derived from the commissions earned on houses they sell and from no other source. A salesman's earnings increase in direct proportion to the increase in the number of houses he or she sells.

The Mitchell case involves four areas in Southwest

Atlanta known as Heritage Valley, Dixie Pines, Kings Forest, and an area between Campbellton and Beecher Roads. These areas comprise altogether a total of four square miles. The cases against Stanley and Lawrence involve an area in Southeast Atlanta known as the Candler Road-Glenwood-McAfee area.

These areas have been since 1968 considered racially transitional; that is, prior to 1968 the racial occupancy of them was all white, but beginning in 1968 as blacks began moving in whites began moving out. All of the areas are now substantially all black. All of the defendants were aware of this transition.

Virtually all of the testimony in each case came either from housewives now or formerly living in the affected areas or from the defendants and agents themselves.

The evidence at the trial disclosed many illuminating things about what happens in a residential neighborhood when it becomes racially transitional. For example, if these cases are typical – and the court believes they are – the following consequences can be predicted as inevitable and beyond dispute: First, a sense of panic and urgency immediately grips the neighborhood and rumors circulate and recirculate about the extent of the intrusion (real or fancied), the effect on property values and the quality of education. Second, there are sales and rumors of sales, some true, some false. Third, the frenzied listing and sale of houses attracts real estate agents like flies to a leaking jug of honey. Fourth, even those owners who do not sell are merely tempted as their neighbors move away, and hence those who remain are peculiarly vulnerable. Fifth, the names of successful agents are exchanged and recommended between homeowners and frequently the agents are called

by the owners themselves, if not to make a listing then at least to get an up-to-date appraisal. Constant solicitation of listings goes on by all agents either by house-to-house calls and/or by mail and/or by telephone, to the point where owners and residents are driven almost to distraction.

In this maelstrom the atmosphere is necessarily charged with Race, whether mentioned or not, and as a result there is very little cause or necessity for an agent to make direct representations as to race or as to what is going on. On the contrary both sides already know, all too well, what is going on. In short, for an agent to get a listing or make a sale *because* of racial tensions in such an area is relatively easy, whereas the direct *mention* of race in making the sale is superfluous and wholly unnecessary.

It is perhaps for this reason that the evidence here as to direct racial representations by the individual agent is skimpy indeed and is, in the view of the court, insufficient to establish an individual "pattern or practice" against the defendants or either of them.

At the same time what the evidence does establish, by overwhelming preponderance, is a "group" pattern or practice by all agents in the area, both defendants and non-defendants, and that some agent or agents of each of the defendants did knowingly participate in such pattern or practice, at least in some measure or to some degree.[2]

[2] For example: As to defendant Ray Mitchell, prohibited representations were made to Mrs. McCrimmon by agents Wofford and Rick (though both of these agents were either fired by this defendant or resigned long before these suits were filed); to Mrs. Turner and Mr. King by agent Cook; and to Mrs. Galloway by agent McDougall.

The court is further of the opinion that the foregoing finding establishes the necessary "concert" of action to allow the Attorney General to bring this suit and entitled him to an injunction requiring that, in the future, the defendants obey the law.

This would normally dispose of these cases, but in fairness to the defendants and in amelioration of the injunction to be entered the court cannot omit an observation that in at least some instances the agents were more sinned against than sinning. There is clear evidence, for example, that in at least one instance a complaining witness who had listed her house with an agent of one defendant, and who had recommended to other neighbors that they do likewise, became disenchanted with the agent primarily because a black purchaser whom the agent had produced reneged on his purchase contract. She freely admitted from the stand that because of this when the present investigation started she came forward as a witness as to statutory violations solely to "get" the real estate license of one of the defendants if she could do so.

At least two other governmental witnesses testified to their affiliation with a civic group first known as the "Neighborhood Stabilization Committee" and later as "South DeKalb Neighbors." Its object was to stabilize the neighborhood. Meetings were held weekly. One of these witnesses took an examination and became an agent herself simply to find out what could be done

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As to defendant Stanley, prohibited representations were made to Mrs. Hadley by agent Garner and to homeowner Rodgers by agent Rogers.

As to defendant Lawrence, prohibited representations were made to Mrs. Wilmer, Mrs. McCrum, Mrs. Brown, and Mrs. Crews by agents Hammond and Murrison.

under the law. She was thoroughly familiar with the Fair Housing Act and its sanctions. She was party to a number of actions aimed at one of the defendant companies and others operating in the area. For example, on one occasion she put a sign in her yard saying, "Warning – Real Estate Agents shot on sight." On another occasion, as president of her local group, one of these witnesses attended a convention of a national neighborhood group in Dayton, Ohio, and brought home circulars advising homeowners to "encourage agents to make racial representations" in violation of the Act and to "lead the agents on" until a violation of the Act was established. Some 4,000 of these circulars were distributed in her neighborhood.

It also appears that of the defendants' agents making racial representations at least two had been discharged by defendants, for one cause or another, long before these suits were filed.

There was also evidence, undisputed in the record, that two of the three defendants remaining in the cases held meetings with their agents on a daily or weekly basis at which the appropriate sections of the Fair Housing Act were read and discussed and the agents admonished to observe its provisions.

Considering these circumstances and the scantiness of the direct evidence the court must say that it is not overly impressed with the gravity of the individual transgressions of the individual defendants and their agents. It *is* convinced, however, that by a group pattern or practice the neighborhoods involved were, because of the racial transition thereof, harassed almost beyond endurance and that each of the defendants in some measure participated therein. They should there-

fore be enjoined.

It is therefore CONSIDERED, ORDERED AND ADJUDGED:

(1) That the defendants and their agents, employees, successors, and all those acting in concert or participation with them, be and they are hereby permanently enjoined from inducing or attempting to induce any person to sell or rent any dwelling by any explicit or implicit representations regarding the entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin;

(2) a. That the defendants shall instruct each salesman, agent, and employee of the provisions of the Fair Housing Act and of this decree, his obligations and duties thereunder, and that failure to comply with these obligations and duties may result in dismissal or other appropriate action. This instruction shall be given within ten (10) days of the entry of this decree, and thereafter within ten (10) days of hiring of any new salesmen, employees, and agents. The defendants shall secure from each salesman, employee, and agent a signed statement certifying that he understands his obligations and duties not to discriminate against any person on account of race, color, religion, or national origin in relation to the sale or rental of dwellings or the employment of personnel;

b. That the defendants shall conduct all solicitation effort in such a manner so that the types and amount of solicitation activity shall be essentially similar in all areas in which the defendants conduct

business and the defendants shall not conduct a greater amount or a different type of solicitation in areas which are inhabited by Negroes, or partially inhabited by Negroes, than in areas which are not so inhabited;

c. That the defendants shall make a notation on their records to indicate the race of each person who purchases a house, or sells a house, in the course of their business;

d. That the defendants in all of their real estate transactions, shall provide their services without distinctions based on race or color;

(3) That in case of a dispute as to any future charge by plaintiff that this order has been violated by either defendant, the parties, in an attempt to resolve such dispute, shall attempt to conciliate the matter which is the subject of the allegation within 30 days after the other party has been notified of the alleged violation, and a party shall not apply to this court for additional relief or other appropriate relief within such 30 day period, provided that nothing shall prevent a party from applying to the court in the event that the alleged violation is an explicit violation of the order, as found by the court, and the utilization of the procedure described above would result in irreparable injury to the victim of the alleged discrimination; and

(4) That this order shall be effective for a period of two years from this date, provided, however, that for good cause shown, the parties may move this court for an extension or modification of the order, as appropriate, upon giving the other party 30 days

notice prior to moving for such modification or extension.

Representatives of the plaintiff shall be permitted to inspect and copy all pertinent records of the defendants at any and all reasonable times, provided, however, that the plaintiff shall endeavor to minimize any inconvenience to the defendants from the inspection of such records.

In view of the foregoing injunction no ruling is made on the government's further contention that a group of persons has been denied rights under the Act, first because the evidence here, in the view of the court, is not sufficient to raise an issue of general public importance as required by 42 U.S.C.A. § 3604(b), and second, because the individuals affected are each assured of a remedy under 42 U.S.C.A. § 3612 in any event.

The court retains jurisdiction of this action for all purposes.

IT IS SO ORDERED.

This 27th day of December, 1971.

/s/ NEWELL EDENFIELD
NEWELL EDENFIELD
UNITED STATES DISTRICT JUDGE

ENTERED DECEMBER 27, 1971